

(1936) 02 CAL CK 0030

Calcutta High Court

Case No: Ex. Case No. 61 of 1935

Babu Ashutosh Ghose

APPELLANT

Vs

Protap Chandra Banerji and
Others

RESPONDENT

Date of Decision: Feb. 11, 1936

Final Decision: Dismissed

Judgement

Panckridge, J.

This is an application on behalf of the Plaintiff calling upon the National Insurance Co., Limited, to pay to the Sheriff of Calcutta certain moneys payable in respect of policies of insurance on the life of Protap Chandra Banerji, deceased. The application is made in an execution case, the decree having been passed by the First Munsif of Bhagalpore. Some of the Defendants in the suit are the heirs, according to Hindu Law, of the assured Protap.

2. A consent decree was passed in terms of a compromise petition whereby it was agreed that the Plaintiff should get a decree against the heirs of Protap to be realised out of Protap's assets. Under the compromise there is a covenant by the heirs to apply within one month for a succession certificate, if necessary, and there is also a provision that if they do not so apply, the Plaintiff will have the right to apply for letters of administration or a succession certificate, or to take any steps necessary for the realisation of the money due on the policies, the heirs being responsible for the costs incurred by the Plaintiff in taking such steps.

3. The application is resisted by the Insurance Company on the ground that as matters stand at present, the Defendants have no title to the sum payable under the policies.

4. In the schedule to the policies the event, on the happening of which the sums assured become payable is the death of the assured before the 12th of September, 1948, or his surviving till that date. The person or persons to whom the sums

assured are payable are the assured or his executors, administrators, or assigns.

5. The assured died before the date specified in the policies, and therefore the persons entitled to claim the money due under them are his administrators, executors or assigns. In spite of the provisions in the compromise petition which I have read, the heirs have not applied for letters of administration, or a succession certificate, nor has the Plaintiff availed himself of his right to do so in these circumstances.

6. The Company, though they do not dispute the bono fides of the claim, and do not suggest that there is anybody else except the heirs entitled to succeed to the estate of the assured. point out that they can only be called upon to pay in terms of the policies, which are the contracts between themselves and the assured.

7. The Plaintiff relies on sec. 212 of the Succession Act, which relieves Hindus, among others, of the necessity of obtaining a grant of letters of administration before establishing their right to any part of the property of an intestate. In my opinion, this cannot affect the matter, because although the grant of letters of administration is not essential in the case of a Hindu intestacy, yet those entitled to succeed, can, and frequently do, take out letters of administration. Therefore, there seems to me to be no justification for reading the word " administrators " in the policies as including those who are relieved of the necessity of taking out letters of administration by reason of the provisions of sec. 212 (2).

8. It is alternatively suggested that the effect of the consent decree is to make the Plaintiff an assignee, within the meaning of the policies. I think there are several difficulties in the way of accepting this proposition, for one thing the word " assign " in the policies must obviously mean the person to whom the assured has assigned the benefits of the policies. It is quite clear that the decree cannot be read as an assignment by the assured, because he was dead at the time that the decree was passed and the agreement of compromise arrived at.

9. I notice that there are certain provisions as to assignment in the conditions and privileges set out at the foot of the policies, and they may possibly be a further bar to holding that the decree constitutes an assignment and makes the Plaintiff an assignee of the policies.

10. I have been referred to certain cases, and the one which in my opinion is the most in point is *The Gresham Life. Insurance Society, Limited v. The Collector of Etawah* ILR 54 All. 1026 : S.C. 30 All. L.J. 1015 (1932). That was also a case of a Hindu assured. The person entitled to succeed to his estate was a minor adopted son whose estate was under the management of the Court of Wards. The Company having refused to pay without production of a grant of Probate or of Letters of Administration, the Collector, as Manager of the Court of Wards, brought a suit to recover the policy moneys on behalf of the minor. The Court held that the Company acted within its rights in insisting on the production of either a Probate or Letters of

Administration or a Succession Certificate before paying the money. The Court observed that the Company is entitled to stipulate that it will pay the money due under the policy only to the assured or to his executors or administrators or his assigns, and that the limitation thereby imposed is good as against persons claiming title under the assured. For these reasons I am of opinion that until the Plaintiff has satisfied the conditions of the policies, he is not entitled to call upon the Insurance Company to pay the money to him, or to pay it into Court. This application is accordingly dismissed with costs.