(1928) 02 CAL CK 0035

Calcutta High Court

Case No: None

Krishna Lal Sadhu and Another		APPELLANT
	Vs	
Pramila Bala Dassi		RESPONDENT

Date of Decision: Feb. 22, 1928

Acts Referred:

- Contract Act, 1872 - Section 2(d)
- Married Womens Property Act, 1874 - Section 6

Citation: 114 Ind. Cas. 658

Hon'ble Judges: George Claus Rankin, C.J; Charu Chunder Ghose, J

Bench: Division Bench

Judgement

Charu Chunder Ghose, J.

In this case the main contention that has been urged on behalf of the two defendants, who are appellants before us, is that the monies payable under a Policy of Insurance, being Policy No. 4667, issued by the Hindusthan Co-operative Insurance Society, Limited, did not form part of the assets of the estate of one Behari Lal Sircar deceased and that his widow, Pramila Bala Dassi, had no rights therein. In order to understand the precise significance of this contention, it is necessary to set out the facts giving rise to the litigation out of which the present appeal has arisen. It appears that one Behari Lal Sircar insured his life on the 29th March, 1910, for a sum of Rs. 500. The material words of the Policy with which we are concerned are as follows: "The Society hereby guarantees to insure that if the insured pays to the Society at their office in Calcutta on the fifth day of March, nineteen hundred and ten and each succeeding year up to and including the year of his death the sum of rupees twenty-one and annas eleven only or in lieu of any such annual premium the full number of instalments thereof as may be agreed upon (of which agreement the receipt granted by the Society shall be full and sufficient evidence) then upon proof to the satisfaction of the Office Committee of the Society

of the death of the insured and the title to the Policy, the Society will pay to Srimati Pramila Bala Dassi, wife of the insured (hereinafter called the nominee) at the Head Office of the Society in Calcutta or at the permanent residence of the nominee whichever may be preferred the sum of rupees five hundred only together with such additional sum or sums by way of profits as, according to the Society''s Regulations, may accrue and become payable in respect of the Policy, after deducting therefrom (1) the balance of the premium, if any, payable in respect of the year of the insured''s death and (2) also other sum or sums, if any, due from him to the Society." The assured paid all the premiums due on the Policy till his death which took place some time in 1324 B.S. He died leaving him surviving the plaintiff, Pramila Bala Dassi, his widow and three sons. The sons were his heirs under the Hindu Law. On the death of the assured, the plaintiff claimed the amount of the said Policy and it appears that the Insurance Society were about to make payment to the plaintiff. The defendants Nos. 1 and 2 who had obtained a decree against the sons of the deceased and the defendant No. 3. who had also obtained another decree against them attached the amount payable under the Policy in execution of their two decrees. The plaintiff, thereupon, preferred a claim under the provisions of the Code of Civil Procedure, but her claim was disallowed and the money due under the Policy was rateably distributed among the three execution creditors. Thereafter the present suit was brought by the plaintiff for declaration of her title to the amount payable under the said Policy and for recovery of the money from the creditors.

2. In the Court of first instance the plaintiff''s suit was contested only on behalf of defendants Nos. 1 and 2 and it was held that the money due under the Policy became the property of the plaintiff, on the death of the deceased, and did not form part of the assets of the estate left by him. The decree of the first Court ran as follows: "Plaintiff to get a decree for the sum of Rs. 173-0-9 with proportionate costs for plaint and Pleader''s fees, whole cost of the suit necessitated by the contest from defendants Nos. 1 and 2; and Rs. 326-15-3 with proportionate costs for the plaint and Pleader''s fee from defendant No. 3". The lower Appellate Court affirmed the decree of the first Court. The defendant No. 3 does not challenge the decree of the lower Appellate Court and, as stated above, the defendants Nos 1 and 2 are the appellants before us. On their behalf it is contended that having regard to the authorities viz, the cases of Jiban Krishna Mullik Vs. Nirupama Gupta and Another, Shankar v. Umabai 19 Ind. Cas 733 : 37 B. 471 : 15 Bom. L.R. 320 and Ishani Dasi v. Gopal Chandra Dey 25 Ind. Cas. 236 : 20. C.L.J. 44 : 18 C.W.N. 1335 it ought to be held that, having regard to the words used in the Policy, there was no trust created in favour of the plaintiff and that she was not entitled to realise the money in question from the Insurance Society and that the said money formed part of the assets of the estate of the deceased. On the other hand, it has been contended on behalf of the plaintiff-respondent that she was beneficially interested in the said Policy and that she atone was entitled to enforce the claim arising thereunder. It has further been argued that the Married Woman''s Property Act of 1874 applies to this case and that,

therefore, it cannot be questioned there was a trust in favour of the plaintiff and that the latter was entitled to realise the money in question from the Insurance Society. It has also been contended that under the CPC the execution creditors were not entitled to attach the amount of the Policy in execution of their decree.

3. The question depends on whether the plaintiff was entitled to enforce her claim against the Insurance Society. If she was, then there could be no question that the money due under the Policy belonged to her and did not form part of the assets of the estate of the deceased. The plaintiff was, no doubt, the nominee of the deceased; but she was no party to the contract between the deceased and the Insurance Society. Under the English Law, if A contracts with B for a benefit to be given to C, although that was the object and purpose of the contract, C may not sue on that contrast unless in certain excepted cases. The excepted cases are these: Where you can read on the whole of the deed or contract that the contracting party really was a trustee for a third person, then the third person may sue. An illustrative case of this description is the case of Fletcher v. Fletcher (1844) 4 Hare 67 : 14 L.J. Ch. 66 : 8 Jur. 1040 : 67 E.R. 564 : 67 R.R. 6. In that case a man covenanted with the trustee or a person whose name was introduced as trustee that after his death, ₹80,000 of his property should be handed to that trustee in trust for the natural children of the covenanting party. It was held by Wigram, V.C., that, looking at the whole scope and purpose of the deed, it amounted to a declaration of trust by the covenanting party for his natural children and that the latter had a perfect right to sue to enforce the trust, although it wa3 a voluntary trust. The second exception is the case of children under a marriage settlement, where persons in contemplation of marriage make a settlement by way of contract only for the benefit of, amongst others, the children of the marriage. In English Law, the children of the marriage are said to be within the marriage consideration; everybody who is considered to be within the immediate purpose and intent of a marriage settlement is treated as a person from whom consideration moves to the contracting party and, therefore, the children of the marriage are treated as if they themselves, although, of course, they are not then in existence, had given valuable consideration for the contract in the marriage settlement. This last second exception is referred to by Cotton, L.J., in the case of Andrews v. Andrews (1880) 15 Ch. D. 228 : 49 L.J. Ch. 756 : 43 L.T. 135 : 28 W.R. 930 where His Lordship observed as follows: "As a rule, the Court will not enforce a contract as distinguished from a trust at the instance of persons not parties to the contract: Colyear v. Countess of Mulgrave (1836) 2 Keen 81 : 5 L.J. Ch 335 : 48 E.R. 559 : 44 R.R. 191. The Court would probably enforce a contract in a marriage settlement at the instance of the children of the marriage, but this is an exception from the general rule in favour of those who are specially the objects of the settlement". In the case of Orr v. Union Bank of Scotland (1852) 1 Macq. 513 : 2 C.L.R. 1566 it was held that the mere payment of money by A to B, who is not C''s agent with a direction to pay it to C, is revocable and confers no right of action upon C [see Moore v. Bushell (1857) 27 L.J. Ex. 3 : 114 R.R. 984 and for the application of

the same doctrine in equity: see Hill v. Royds (1869) 8 Eq. 290 : 38 L.J. Ch. 538 : 20 L.T. 812. It is unnecessary for me to multiply cases but the law on the subject will be found in Halsbury''s Laws of England, Vol. 7, page 342, and the illustrative cases collected in English and Empire Digest, Vol. 12, page 44 et seq.

4. It is said, however, that in India the law is somewhat different and in support of this contention the case of Deb Narain Dutt v. Chuni Lal Ghose 20 Ind. Cas. 630 : 41 C. 137 : 17 C.W.N. 1143 : 18 C.L.J. 603 is referred to. That case was decided after the decision of the Privy Council in the case of Khwaja Mohammad Khan v. Hussaini Begam 7 Ind. Cas. 237 : 32 A. 410 : 37 I.A. 152 : 14 C.W.N. 865 : 7 A.L.J. 871 : (1910) M.W.N. 313 : 8 M.L.T. 147 : 12 C.L.J. 205 : 12 Bom. L.R. 638 : 20 M.L.J. 614 . As I read this last case, it was a case of a contract between A and B, whereby it was intended to secure a benefit to C, as a cestui que trust and the question arose whether C was entitled to sue in his own right to enforce the trust. Their Lordships of the Judicial Committee held that under the agreement executed by A certain Immovable property was specifically charged for the payment of allowance, which A bound himself to pay to the plaintiff and that the plaintiff was the only person beneficially entitled under it. The plaintiff was C. Their Lordships observed as follows: "First, it is contended, on the authority of Tweddle v. Atkinson (1861) 1 B. S. 393 : 30 L.J.Q.B. 265 : 8 Jur. (N.S.) 332 : 4 L.T. 468 : 9 W.R. 781 : 121 E.R. 762 : 124 R.R. 610, that as the plaintiff was no party to the agreement, she cannot take advantage of its provisions. With reference to this it is enough to say that the case relied upon was an action of assumpsit, and that the rule of common law on the basis of which it was dismissed is not, in their Lordships'' opinion, applicable to the facts and circumstances of the present case. Here the agreement executed by the defendant specifically charges Immovable property for the allowance which he binds himself to pay to the plaintiff; she is the only person beneficially entitled under it. In their Lordships'' judgment, although no party to the document, she is clearly entitled to proceed in equity to enforce her claim." 5. In the case of Deb Narain Dutt v. Chuni Lal Ghose 20 Ind. Cas. 630 : 41 C. 137 : 17 C.W.N. 1143 : 18 C.L.J. 603 the transferee of a debtor''s liability had acknowledged his obligation to the creditor for the debt to be paid by him under the provisions of a registered instrument, conveying to him all the moveable and Immovable properties of the original debtor and the acknowledgment had been communicated to the creditor and accepted by him. In these circumstances it was held that the obligation undertaken by the transferee was for and intended to be for the benefit of the creditor and the creditor was entitled to sue the transferee on the registered instrument. The facts in Deb Narain Dutt''s case 20 Ind. Cas. 630 : 41 C. 137 : 17 C.W.N. 1143 : 18 C.L.J. 603 were somewhat peculiar and, at first sight, it may seem that the decision proceeded on the difference between ''consideration'' as defined in English Law and as defined in the Indian Contract Act. But a closer examination of the case justifies, in my opinion, the criticism passed on it by Page, J., in the case of Jiban Krishna Mullik Vs. Nirupama Gupta and Another, and the judgment, when properly analysed, does not really go beyond the terms of the

actual decision of their Lordships of the Judicial Committee in the case of Khwaja Mohammad Khan v. Hussaini Begam 7 Ind. Cas. 237 : 32 A. 410 : 37 I.A. 152 : 14 C.W.N. 865 : 7 A.L.J. 871 : (1910) M.W.N. 313 : 8 M.L.T. 147 : 12 C.L.J. 205 : 12 Bom. L.R. 638 : 20 M.L.J. 614 . The same remarks apply to the case of Dwarka Nath Ash v. Prya Nath Malki 36 Ind. Cas. 792 : 22 C.W.N. 279 : 27 C.L.J. 483. In this connexion reference may be made to an English case where the facts were as follows: A tradesman made a Will, bequeathing an interest to M, his wife''s sister. M married. Her husband and the testator entered into partnership articles with a proviso that if the testator should die during the partnership, his widow should be entitled to his interest. It was held by Turner, V.C., [Page v. Cox (1852) 10 Hare 163 : 68 E.R. 882 : 90 R.R. 314 that the effect of the agreement between M''s husband and the testator was to create an obligation in equity upon the surviving partner and in that respect it did not differ from a trust, i.e., that the partnership articles created a trust in favour of the widow. He further held that a trust could not be the less capable of being enforced because it was founded on contract.

5. The point now before us for determination is, in my opinion, covered by authority, see Cleaver v. Mutual Reserve Fund Life Association (1892) 1 Q.B. 147 : 61 L.J.Q.B. 128 : 66 L.T. 220 : 40 W.R. 230 : 56 J.P. 180. There the money due under a Life Assurance Policy was payable to a wife, if living, otherwise to the legal personal representatives of the assured. Lord Esher, M.R., observed as follows: "The contract is with the husband, and with no body else. The wife is no party to it. Apart from the Statute, the right to sue on such a contract would clearly pass to the legal personal representatives of the husband. The promise is one which could only take effect upon his death and, therefore, it must be meant to be enforced by them. It does not seem to me that, apart from the Statute, such a Policy would create any trust in favour of the wife. James May brick might have altered the destination of the money at any time, and might have dealt with it by Will or settlement...I think that, apart from the Statute, no interest would have passed to the wife by reason merely of her being named in the Policy". This case has been followed in Bombay in the case of Shankar v. Umabai 19 Ind. Cas. 736 : 15 Bom. L.R. 320 and in Calcutta in the case of Ishani Dasi v. Gopal Chandra Dey 25 Ind. Cas. 236 : 20 C.L.J. 44 : 18 C.W.N. 1335. In my opinion I can see nothing in the present case which would justify me to distinguish it from the cases referred to above. The result is that the first contention on behalf of the respondent must be negatived.

6. The second contention is that the Married Woman''s Property Act of 1874 is applicable to this case and that, by virtue of Section 6 of the Act, a trust has been created in favour of the plaintiff. Of course, if this contention is well-founded, the plaintiff is entitled to succeed. In my opinion, the correct rule has been laid down by Fletcher and Richardson, JJ., in the case of Ishani Dasi v. Gopal Chandra Dey 25 Ind. Cas. 236 : 20 C.L.J. 44 : 18 C.W.N. 1335 and for the reasons given by them, I am of opinion that the Married Woman''s Property Act does not apply to this case and that the plaintiff cannot invoke in aid the provision of Section 6 thereof. In other words,

we ought not to follow the decision in Pokkunuri Balamba v. Kakaraparti Krishnayya 20 Ind. Cas. 934 : 37 M. 483 : 25 M.L.J. 65 : (1913) M.W.N. 697 : 14 M.L.T. The second contention urged on behalf of the respondent must also be negatived.

7. The third contention is absolutely devoid of substance and there is nothing in Section 60, Civil Procedure Code, which could prevent the creditors of the sons of the deceased from attaching the money payable under the Policy.

8. In my opinion, this appeal succeeds and must be allowed with costs. The defendants Nos. 1 and 2 will also be entitled to the costs in the Courts below.

Rankin, C.J.

9. I agree. Clause (d) of Section 2 of the Contract Act widens the definition of "consideration" so as to enable a party to a contract to enforce the same in India in certain cases in which the English Law would regard that party as the recipient of a purely voluntary promise and would refuse to him a right of action on the ground of nudum pactum. Not only, however, is there nothing in Section 2 to encourage the idea that contracts can be enforced by a person who is not a party to the contract, but this notion is rigidly excluded by the definition of ''promisor'' and ''promisee''. The decision of Tweddle v. Atkinson (1861) 1 B. S. 393 : 30 L.J.Q.B. 265 : 8 Jur. (N.S.) 332 : 4 L.T. 468 : 9 W.R. 781 : 121 E.R. 762 : 124 R.R. 610 was a decision at law and was unaffected by the rules of equity. For this reason the Judicial Committee in Khwaja Mohammad Khan v. Hussaini Begam 7 Ind. Cas. 237 : 32 A. 410 : 37 I.A. 152 : 14 C.W.N. 865 : 7 A.L.J. 871 : (1910) M.W.N. 313 : 8 M.L.T. 147 : 12 C.L.J. 205 : 12 Bom. L.R. 638 : 20 M.L.J. 614) regarded it as inapplicable to the facts of the case before them where the agreement included a specific charge on Immovable property. In my judgment it is erroneous on the basis of that case or on the observations of Jenkins, C.J., in Deb Narain Dutt v. Chuni Lal Ghose 20 Ind. Cas. 630 : 41 C. 137 : 17 C.W.N. 1143 : 18 C.L.J. 603 to suppose that in India persons who are not parties to a contract can be admitted to sue thereon, except where there is an obligation in equity amounting to a trust arising out of the contract. I say nothing as to whether special rules of law may be applicable to communities among whom marriages are contracted for minors by parents and guardians, but putting aside such cases, I see no reason to think that the law in India contains a series of exceptions to the principle that a contract can only be sued upon as such by a party thereto. A trust may be founded on a contract and is capable of being enforced by a party to the trust in appropriate proceedings as was pointed out in Page v. Cox (1852) 10 Hare 163 : 68 E.R. 882 : 90 R.R. 314. It is another matter altogether to say that a person not a party to a contract may bring a suit upon the contract by reason of near relationship to the promisee. Nearness of relationship is a fact which, like many other facts, cannot be disregarded in determining the question whether or not a trust arises out of or is founded on a contract, but it has no other importance. Cases such as the present can be decided, and ought to be decided, on the settled principles of equity. In Cleaver''s case (1892) 1 Q.B. 147 : 61 L.J.Q.B. 128 : 66 L.T. 220 :

40 W.R. 230 : 56 J.P. 180 the Court considered whether the Policy amounted to a trust for the widow and, having found that it did not, determined the matter by the ordinary law of contract. This, in my judgment, is the only method which can be justified in principle. To hark back to such cases as Datton v. Poole (1688) 2 Lew. 210 : 83 E.R. 523 and Bourne v. Mason (1680) 1 Ven. 6 : 86 E.R. 5 is, in my judgment, a clear mistake and the mistake is not cured by the circumstance that under the Contract Act, the definition of "consideration" is wider than in English Law.