

## APPELLATE CIVIL.

Before Mukerji A. C. J. and S. K. Ghose J.

1934

July 20;  
Aug. 7, 9.

ATULCHANDRA SEN

v.

KANNAMMAL.\*

*Provident Fund—Right of nominee to obtain succession certificate, if barred by previous grant—Provident Funds Act (XIX of 1925), ss. 4, 5 (2)—Indian Succession Act (XXXIX of 1925), ss. 373, 385.*

The nominee of a depositor in a Provident Fund is entitled to a Succession Certificate in respect of the money due on the deposit, without any proof of his right thereto, such as an applicant for a certificate has otherwise to establish under section 373 of the Indian Succession Act.

The fact that a Succession Certificate has already been granted to another heir is no bar to the grant of a second certificate to the nominee, Section 385 of the Indian Succession Act is not exactly a bar to the issue of a second Succession Certificate in respect of the same debt, but it merely says that a certificate subsequently granted would be invalid under certain circumstances.

Sub-section (2) of section 5 of the Provident Funds Act, read with section 4, therefore means that, in a competition between two persons, it is the nominee who holds a certificate who is entitled to the money.

APPEAL FROM ORIGINAL ORDER by the petitioner for certificate.

The facts of the case are stated in the judgment. *Jitendrakumar Sen Gupta* (with him *Pareshchandra Sen*) for the appellant. Being the nominee of the depositor, I am exclusively entitled to the grant of Succession Certificate in respect of the Provident Fund money under all circumstances and no bar can operate as against me. I rely upon section 5 (2) of the Provident Funds Act.

No one for the respondent.

*Bijankumar Mukherji* (on behalf of the Government at the request of the Court). The Indian Succession Act does not in so many words prohibit the

\*Appeal from Original Order, No. 272 of 1932, against the order of A. deC. Williams, District Judge of Chittagong, dated Mar. 31, 1932.

grant of a second Succession Certificate in respect of the same debt, but only says that under certain circumstances the second certificate would be invalid (section 385).

Sub-section (2) of section 5 of the Provident Funds Act read with section 373 of the Indian Succession Act does not in terms give an absolute and exclusive right to the nominee to obtain a Succession Certificate, but gives him a preferential right to obtain it, and to get the money as against another certificate-holder, if any.

*Cur. adv. vult.*

The judgment of the Court was as follows:—

The question in this case is what is the true meaning of section 5, sub-section (2) of the Provident Funds Act (XIX of 1925).

The appellant applied in the court of the District Judge of Chittagong for a Succession Certificate in respect of a debt in favour of a deceased person recoverable from the Assam-Bengal Railway Company, Limited. The debt was an amount of Provident Fund money, due to the deceased, in respect of which the appellant was the nominee.

The respondent, as widow of the deceased, had, prior to the said application, obtained a Succession Certificate in respect of the assets of the deceased from the court of the District Judge of Trichinopoly. The appellant's application has been refused by the learned judge on the ground that the certificate previously obtained by the respondent affords a bar.

The question turns on the meaning of sub-section (2) of section 5 of the Provident Funds Act (XIX of 1925). The relevant words of the sub-section are:—

"Notwithstanding anything contained in the Succession Certificate Act, 1880 \*\* \*\* any such person" (*i.e.*, a nominee) "shall, on the death of the subscriber or depositor, be entitled to the grant of a certificate under that Act \*\* \*\* entitling him to receive payment *etc.*"

Does it mean only this that the nomination will entitle the nominee to a certificate without any proof

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of his right thereto such as an applicant for a certificate has otherwise to establish (*vide* section 373 of the Succession Act, XXXIX of 1925)? Or, does it go further and mean that other provisions of the Act which may afford as a bar will also be operative? The matter is one of first impression and it is not easy to see what exactly was the intention of the legislature. But it appears that there is no provision in the Act laying down that no certificate shall be granted in respect of assets for which a previous certificate has been obtained. Section 385 of the Succession Act merely says that a certificate subsequently granted would be invalid under certain circumstances. Moreover, the effect of section 4 of the Provident Funds Act is that, in a competition between two persons, it is the nominee who holds a certificate who is entitled to the money. We, therefore, think it would be reasonable to hold that the former meaning should be attributed to the sub-section in question.

The result is that, in our judgment, the appeal should be allowed and the order complained of being set aside, the case will go back to the court below and that the application for certificate, if it is otherwise in order, should be granted.

No order as to costs.

*Appeal allowed.*

A. A.