

ORIGINAL CIVIL.

Before Panckridge J.

ASHU TOSH GHOSH

v.

PRATAP CHANDRA BANERJI.*

1936

Feb. 11.

Insurance policy—Sum assured, payable to executors or administrators of deceased policy-holder—Hindu policy-holder, Heirs of, when can claim the sum assured—Indian Succession Act (XXXIX of 1925), s. 212.

Where it is provided for in a policy of insurance on the life of a Hindu that the sum assured will become payable to him on a particular date or, in the event of his earlier death, to his executors or administrators, and the Hindu dies intestate before such date, the insurance company can refuse to pay the sum assured to his heirs until they have obtained letters of administration, although such heirs are allowed by law to establish their right to the estate of the deceased Hindu without obtaining letters of administration.

Gresham Life Insurance Society, Ltd. v. Collector of Etawah (1) followed.

APPLICATION in Chambers.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

S. C. Bose and *S. N. Bose* for the decree-holder applicant.

Page for the insurance company.

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 Pratap Chandra Banerji, deceased.

The application is made in an execution case, the decree having been passed by the First Munsif of Bhagalpur. Some of the defendants in the suit are the heirs, according to Hindu law, of the assured Pratap.

* Execution Case No. 61 of 1935.

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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 Pratap to be realised out of Pratap'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.

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.

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 September 12, 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.

The assured died before the date specified in the policies, and therefore the persons entitled to claim the money due under them are his executors, administrators 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.

The company, though they do not dispute the *bona 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.

The plaintiff relies on s. 212 of the Indian 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 s. 212 (2).

It is alternatively suggested that the effect of the consent decree is to make the plaintiff an "assign", 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 the decree was passed and the agreement of compromise arrived at.

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.

I have been referred to certain cases, and the one which, in my opinion, is the most in point is *Gresham Life Insurance Society, Ltd. v. Collector of Etawah* (1). 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.

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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. Certified for counsel.

The prohibitory order is dissolved.

Attorney for applicant: *Ramesh Chandra Basu.*

Attorney for insurance company: *G. N. Ghose.*

Application dismissed.

P. K. D.