ORIGINAL CIVIL.

Before Panckridge J.

1940

Jan. 19.

NIDHU SUDAN MUKHERJI

v.

BIBHA BATEE DEBI.*

Provident Fund—*Child—Adult married daughter—Nominee, Rights of—Provident Funds Act (XIX of 1925), ss. 2, 4, 5—General Provident Fund (Bengal Services) Rules, rr. 8, 31.*

Under r. 8 of the General Provident Fund (Bengal Services) Rules, a subscriber had validly nominated his wife as the beneficiary of his provident fund. The wife predeceased the husband and there was no subsequent effective nomination. Upon the death of the subscriber, his three adult sons claimed to be solely entitled to the amount standing to the credit of the subscriber, to the exclusion of the adult married daughters on the grounds : (*a*) that where the terms "child" or "children" are used in the rules or in the Provident Funds Act, a "minor child" or "minor children" are intended ; and (*b*) that they were the only heirs of their mother, in whom the fund had vested absolutely, as nominee.

Held: (*i*) that under the Provident Funds Act, as also under the rules, the term "child" is not confined to sons and daughters below the age of majority. Therefore married daughters answer the description of child and are dependants as defined in s. 2 of the Act;

Mohammad Naim v. *Munim-un-Nissa* (1) followed ;

Hemantakumar Banerji v. *Manorama Debee* (2) not applied ;

(*ii*) that whatever be the position if the rules stood by themselves, as the rights of nominees, which include rights of nominees' representatives, are expressly postponed, by the Act, to the rights of defendants, the married daughters are entitled to share equally with the sons of the subscriber.

M. Mon Singh v. *Mothi Bai* (3) considered.

ORIGINAL SUIT.

The facts of the case appear fully from the judgment.

*Original Suit No. 19 of 1939.

(1) (1935) I. L. R. 11 Luck. 611. (2) (1935) I. L. R. 62 Cal. 639.
(3) (1935) I. L. R. 59 Mad. 855.

N. N. Bose and *T. Chatterji* for the plaintiffs. The definition of the word "family" in the rules and r. 31 clearly indicate that the fund is to be applied for the benefit of the members of the family only where there is no subsisting valid nomination. These rules have statutory force.

In this case, the subsequent nomination of himself by the subscriber being ineffective, the nomination of the wife is subsisting and therefore the fund vested in her absolutely. (*Vide* s. 5 of the Act.) The plaintiffs are her heirs and representatives and are entitled to receive the sum standing to the credit of the subscriber. *M. Mon Singh* v. *Mothi Bai* (1).

If it be held that "dependants" come in first, in this case there are no dependants. Both under the Act and the Rules, "child" or "children" must mean "minor child" or "minor children". At most, "child" must mean a son or a daughter whom the father is under a legal obligation to support. *Hemantakumar Banerji* v. *Manorama Debee* (2). In construing the word "child" the ordinary meaning should be taken: *Maniram Seth* v. *Seth Rupchand* (3). The daughters of the subscriber are all of age and married and the subscriber was no longer bound to maintain them; therefore they do not come within the term "children".

The Advocate-General, Sir Asoka Roy and *Fazle Akbar* for the Accountant-General. In construing the word "child" both the Act and the Rules must be considered. Under s. 2(*c*) of the Act, the word "minor" has been used to qualify the word "brother" which appears immediately after the word "child". Therefore the inference is clear that by "child" there was no intention to restrict it to sons and daughters who were minors. *Vide Mohammad Naim* v. *Munim-un-Nissa* (4). There is nothing in the rules

(1) (1935) I. L. R. 59 Mad. 855.
(2) (1935) I. L. R. 62 Cal. 639.
(3) (1906) I. L. R. 33 Cal. 1047 (1058); L. R. 33 I. A. 165 (172).
(4) (1935) I. L. R. 11 Luck. 611, 638.

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to show that child means a minor child. In fact, r. 31 makes an explicit distinction between adults and infants but does not indicate that infant children are only included in the family. On the contrary, in some cases adult children are entitled to be paid.

In this case, upon the death of the wife, the nomination in her favour ceased to subsist and therefore there was no nominee. Under r. 8 the subscriber could make a fresh nomination and the latest amendment to the rule clearly indicates that no vested right in the life-time of the subscriber is contemplated. *M. Mon Singh* v. *Mothi Bai* (1) is distinguishable, as in that case no rules had been framed, while r. 31(*b*) and App. D apply to this case.

J. N. Majumdar and *K. L. Roy* for the defendant Bimala Bala Debi. If it had been the intention of the legislature to restrict the word "child" to minor sons and daughters, it would have used the word "minor" with "child", as in the case of "minor brother". *Mohammad Naim's* case (2). Under s. 3 of the Act, upon the death of the subscriber, the money vests in his "dependants". A married daughter is both a dependant within the meaning of the Act and a member of the family within the meaning of the rules. (*Vide* r. 31.)

Where a nominee dies before the subscriber, the heirs of the nominee have no rights whatsoever *Ismail* v. *Amina* (3). The decision in *M. Mon Singh* v. *Mothi Bai* (*supra*) is misconceived and cannot apply to this case.

N. N. Bose in reply.

PANCKRIDGE J. This case raises questions of considerable difficulty with regard to the construction of the Provident Funds Act (XIX of 1925) and of the General Provident Fund (Bengal Services) Rules.

(1) (1935) I. L. R. 59 Mad. 855. (2) (1935) I. L. R. 11 Luck. 611, 638.
(3) [1929] A. I. R. (Sind) 158.

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The facts are as follows: Dr. Madhu Sudan Mukherji was a member of the Bengal Medical Service, and he died intestate on March 5, 1936. According to the written statement of the Accountant-General of Bengal, who has been made a party defendant to this suit, at the date of the doctor's death he had standing to his credit in the Government Provident Fund a sum of Rs. 22,760-13, which had become, at the date of the Accountant-General's written statement, which was filed on February 13, 1939, Rs. 24,433-13.

The plaintiffs are the three adult sons of the deceased doctor and they claim a declaration that they are solely entitled to receive the entire amount standing to the doctor's credit in the Government Provident Fund (Bengal Services).

Three of the defendants are the three daughters of Dr. Madhu Sudan Mukherji, all of whom are married and have attained the age of majority. The first and the third defendants have not contested the suit, and a document has been proved by the plaintiffs executed by the first and third defendants on November 24, 1938, whereby these defendants relinquished, determined, and surrendered in favour of the plaintiffs, all their right, title, and interest, claim, and demand, to and in the sum standing to the credit of Dr. Madhu Sudan Mukherji in the Government Provident Fund. It was suggested that the second defendant had also relinquished her claim at the time when the plaintiffs applied for a Succession Certificate to enable them to withdraw the money. The plaintiffs, however, do not now rely on any relinquishment or disclaimer made by the second defendant, and the question which I have to decide is whether on the true construction of the statute and of the Rules the plaintiffs are solely entitled to the sum or whether the second defendant is entitled to participate with them. The question is difficult because the Act and the Rules appear to me to be discrepant in several important particulars, and the

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situation is complicated because it is admitted that Dr. Mukherji during the lifetime of his wife Sm. Niru Pama Debi validly nominated her as the beneficiary of his provident fund. Sm. Niru Pama Debi predeceased her husband, and although it is stated that he went through the form of nominating himself, it is agreed that a nomination of that nature is ineffective.

I will first deal with the situation as it would stand, if it were not complicated by the nomination as beneficiary of the mother of the plaintiffs and defendants other than the Accountant-General.

Under the rules "family" is defined to mean, in the case of a male subscriber, the wife or wives and children of a subscriber and certain other persons. Under r. 31 on the death of a subscriber who leaves a family before the amount standing to his credit has become payable, if no nomination in favour of a member or members of the family of the subscriber subsists, the whole amount standing to his credit in the fund becomes payable to the members of his family in equal shares. It is clear, therefore, that, if the married daughters can be said to be members of the family, they are entitled to share equally with their brothers. The plaintiffs contend that, where the terms "child" or "children" are used in the Rules or in the Provident Funds Act, a minor child or minor children are intended, and that they cannot be applied to cover the sons and daughters of a subscriber who have attained the age of majority.

Now, with regard to the rules, that submission is clearly untenable because by a proviso to r. 31 it is provided that no share shall be payable to (i) sons who have attained legal majority; (ii) sons of a deceased son who have attained legal majority; (iii) married daughters whose husbands are alive; (iv) married daughters of a deceased son whose husbands are alive: if there is any member of the family other than those specified in cls. (i), (ii), (iii)

and (iv). Clause (iii) comprises the married daughters whose husbands are alive and cl. (i) comprises the sons who have attained legal majority. Both these classes are treated as members of the family and it cannot be suggested that they can be members of the family upon any other basis than that of being the "children" of a subscriber. When we come to the statute the position is not quite so easy. The statute does not treat the kinsfolk of a subscriber under the head of "family" but under the head of "dependant". By s. 2(*c*) "dependant" is defined as any of the following relatives of a deceased subscriber to, or a depositor in, a Provident Fund, namely a wife, husband, parent, child, minor brother, unmarried sister and a deceased son's widow and child, and, where no parent of the subscriber or depositor is alive, "a paternal grand-parent".

By s. 4 when a sum standing to the credit of any depositor or subscriber has become payable the official whose duty it is to make the payment shall pay the sum or balance as the case may be to the subscriber or depositor, or if he is dead, shall: (a) if the sum or balance, or any part thereof, vests in a dependant under the provisions of s. 3, pay the same to the dependant or to such person as may be authorised by law to receive payment on his behalf.

Under s. 3, sub-s. (*2*), any sum standing to the credit of any subscriber or depositor at the time of his decease and payable under the rules of the fund to any dependant of the subscriber or depositor or to such person as may be authorised by law to receive payment on his behalf shall vest in the dependant, and shall be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor.

Prima facie therefore the first question to be decided is whether the female defendants are "dependants" within the meaning of s. 2(*c*) of the Act. It is agreed that they can only fall within the

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sub-section if they answer to the description of "child." The plaintiffs contend that by "child" minor child is meant. Mr. N. N. Bose for the plaintiffs has referred me to a decision of Nasim Ali J. : *Hemantakumar Banerji* v. *Manorama Debee* (1). There a father sought to vary an order for maintenance made under s. 488 of the Criminal Procedure Code on the ground that the child (a son), was 17 years old, and competent to earn his own livelihood. Nasim Ali J. pointed out that there was no statutory definition of "child" in the Code, and said that he was inclined to hold that a child is a person who is incompetent to enter into any contract or enforce any claim under the law, or in other words a minor according to his personal law. It was also contended that the child was not unable to maintain himself within the meaning of the section. On the evidence the Court rejected that contention. The point that was before the Court was whether some one under the age of majority had ceased to be a child, not whether some one who has attained the age of majority can properly be described as a child. I am by no means prepared to say that s. 488 of the Criminal Procedure Code would not apply to a case where on account of an adult child's inability to support itself owing to bodily or mental defects the father's obligation to maintain it still existed.

In my opinion the sense in which the term "child" is used in a Statute must depend on general considerations as to the subject matter of the Statute and its other provisions.

When I turn to s. 2(*c*) of the Act I find that a "child" is one of a class described as "relatives." That is an indication that what the definition is dealing with is kinship rather than age. There is a direct authority for the defendant's contention that the definition covers an adult child.

(1) (1935) I. L. R. 62 Cal. 639.

I have been referred to *Mohammad Naim* v. *Munim-un-Nissa* (1), where King C. J. observed as follows :—

> It is argued that the word "child" means only a *minor* child, but I do not think that the word should be thus narrowly construed. In the list of persons who are declared to be dependants the word "child" is immediately followed by "minor brother." If therefore it had been intended that the word "child" was to be restricted only to a *minor* child presumably the legislature would have used the expression "minor child."

It is clear that the definition does not make dependency conditional on a special need of support because among the dependants are both a husband and a parent who may be persons perfectly able to maintain themselves. I see no reason to confine the term "child" to sons and daughters below the age of majority. That being so I consider that the married daughters of Dr. Mukherji, of whom the second defendant is one, answer the description of "child", and are, therefore, dependants as defined in s. 2 of the Act.

That would dispose of the question were it not for the nomination in favour of the subscriber's predeceased wife.

With regard to nomination, under r. 8, it is obligatory on a subscriber who, at the time of joining the Fund, has a family or subsequently acquires one, to make a nomination of a member of his family conferring the right to receive the amount that may stand to his credit in the Fund in the event of his death before the amount standing to his credit becomes payable.

Dr. Mukherji's wife was a member of his family within the meaning of the Rules.

Under r. 31 when a subscriber leaves a family, if a nomination made by him in favour of the member or members of his family subsists, the amount standing to his credit in the Fund shall be payable to his nominee or nominees in the proportion specified in the nomination.

(1) (1935) I. L. R. 11 Luck. 611, 638.

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The rule then goes on to deal with the situation which arises when no nomination subsists.

On the rules, I should have said that on the death of Dr. Mukherji's wife the nomination in her favour ceased to subsist. As against that, the Act provides by s. 5 that any nomination duly made in accordance with the Rules of the Fund, which purports to confer upon any person the right to receive the whole or any part of the sum on the death of a subscriber or depositor, shall be deemed to confer such right absolutely until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor by notice given in such a manner and to such authority as is prescribed by those Rules.

The phraseology of this section has been considered in *M. Mon Singh* v. *Mothi Bai* (1) where it was held that these words conferred an absolute vested interest upon the nominee, which meant that in the case of the nominee's death before the Fund became payable, the nominee's rights passed to his heirs to the exclusion of the heirs of the subscriber.

It is accordingly argued that the sons of Dr. Mukherji are entitled to the whole sum as representing the estate of their deceased mother in whom it had vested.

I think the answer to that is that the Act itself provides that the rights of nominees, which include the rights of the nominee's representatives, are expressly postponed to the rights of dependants. This is clear from s. 4 of the Act which provides that the amount standing to a subscriber's credit should be paid to his dependant in the first instance, or to his nominee and only permits his nominee to receive any sum or balance which is not payable under cl. (*a*), that is, to a dependant.

(1) (1935) I. L. R. 59 Mad. 855.

I do not decide what the position would be if the rules stood by themselves, since App. D provides that any sum payable under r. 31 to a member of the family of a subscriber vests in such member under sub-s. (*2*) of s. 3 of the Provident Funds Act; but I have come to the conclusion that the Act must override the rules if it is inconsistent with them, and it expressly makes the claims of the nominee conditional upon the absence of dependants as defined by the Act.

The result is that the second defendant must succeed to this extent, that she is entitled to participate to the extent of one-sixth in the distribution of the Fund.

I should say that the Accountant-General of Bengal raised certain technical defences, but he did not press these as he desired to have the decision of the Court upon the main issue.

The Accountant-General may have his costs out of the Fund.

The plaintiffs must pay the costs of the second defendant.

Certified for two counsel.

Suit dismissed.

Attorney for plaintiffs: *B. N. Bose.*

Attorneys for defendants: *N. L. Roy, D. Mukherjee, H. P. Sutcliffe.*

S. M.