APPELLATE CIVIL.

Before Mr. Justice Pandrang Row.

1937, November 18.

KANNAYALAL (APPELLANT IN APPEAL AGAINST APPELLATE ORDER NO. 145 OF 1935 AND PETITIONER IN CIVIL REVISION PETITION NO. 1302 OF 1935), PETITIONER,

v.

S. SUBBARAYA CHETTY AND TWO OTHERS (RESPONDENTS IN APPEAL AGAINST APPELLATE ORDER NO. 145 OF 1935 AND RESPONDENTS IN CIVIL REVISION PETITION NO. 1302 OF 1935), RESPONDENTS.*

Married Women's Property Act (*III of* 1874), *sec.* 6—*Insurance policy—Money due thereunder to be paid to the assured after fifteen years or to his wife, if assured dies earlier—Assured becomes insolvent—Assignment of the policy in favour of his creditor—Validity of—Trust, if created for the benefit of the wife under the Act.*

An application was filed by the creditor of an insolvent for the assignment of a policy of insurance taken out by the insolvent in his favour. The words " the policy is for the benefit of the wife " were not found in the policy, but it was stated therein that the amount due on the policy should be paid to the assured, i.e., to the first respondent on the expiry of the period of fifteen years, or to his wife on the death of the assured if earlier.

Held (i) that there was a trust impressed on the policy in favour of the wife, from the moment the policy was taken out for her benefit, though she would not be entitled to claim anything unless the event referred to in the policy happened;

(ii) that it was not open to the creditor to treat the policy as being the property of his debtor and to require an assignment of it and to compel the Insurance Company to acknowledge such an assignment as valid and binding upon them.

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Once it is found that a policy of insurance effected by a married man on his own life was for the benefit of his wife, then under section 6 of the Married Women's Property Act, it shall be deemed to be a trust and enure as such so long as the wife is alive.

APPEAL against order of the District Court of North Arcot dated 8th March 1935 and made in Civil Miscellaneous Appeal No. 65 of 1934 preferred against the order of the Court of the Subordinate Judge of Vellore dated 2nd November 1934 and made in Interlocutory Application No. 358 of 1934 in Insolvency Petition No. 19 of 1933; and PETITION under Section 115 of Act V of 1908 and section 75 of Act V of 1920 praying the High Court to revise the order of the District Court of North Arcot dated 8th March 1935 and made in Civil Miscellaneous Appeal No. 65 of 1934 preferred against the order of the Court of the Subordinate Judge of Vellore dated 2nd November 1934 and made in Interlocutory Application No. 358 of 1934 in Insolvency Petition No. 19 of 1933.

P. Viswanatha Ayyar and *V. N. Srinivasa Rao* for appellant.

V. S. Rangaswami Ayyangar for second respondent.

Other respondents were unrepresented.

JUDGMENT.

The appellant in this second appeal and the petitioner in the revision petition are one and the same, the appeal and the revision petition being alternative remedies pursued for the same purpose, namely, of getting the order of the District Judge of Vellore in Civil Miscellaneous Appeal No. 65 of 1934 set aside.

That was an appeal from an order passed in an application by the creditor of an insolvent for the assignment of a policy of insurance taken out by the insolvent in his favour. The second respondent in the petition was the Life Insurance Company and the third respondent was the wife of the insolvent debtor. The only question that had to be decided by the Courts below was whether the life policy in question, Exhibit 1, contains a trust for the benefit of the wife, the third respondent. The *verba ipsissima*, "the policy is for the benefit of the wife", are not to be found in the policy, but it is stated therein that the amount due on the policy should be paid to the assured, i.e., to the first respondent at the expiry of the period of fifteen years, or to his wife on the death of the assured if earlier. In these circumstances the Subordinate Judge was of opinion that there was no trust for the benefit of the wife and allowed the petition. On appeal the District Judge came to the contrary conclusion and allowed the appeal and dismissed the petition. Now the question for me to decide is whether the District Judge's conclusion is right. The Subordinate Judge distinguished the case of *Abhiramavalli* v. *Official Trustee, Madras*(1) by saying that in that case the question had arisen only after the death of the assured whereas in the case before him the assured was alive. He also distinguished the case in *Dinbai* v. *Bamanshaji*(2) on the same ground. The District Judge was of opinion however that the Subordinate Judge was not right in distinguishing the present case from the earlier case. It was

(1) (1931) I.L.R. 55 Mad. 171. (2) (1933) I.L.R. 58 Bom. 513.

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held by MADHAVAN NAIR J. in that case that the actual words "for the benefit of the wife" need not be in the policy in order to attract the provisions of section 6 of the Married Women's Property Act to any particular policy, and that if on a reading of the words used in the policy it appears that the assured intended in the event of his death that the policy should enure for the benefit of his wife, then the policy may be deemed to be for her benefit and brought within the purview of section 6; in the particular case before him the provision regarding payment was similar to the provision in the present case, and it was held that the policy fell within section 6 of the Married Women's Property Act III of 1874 as amended by the subsequent Act XIII of 1923. The only other decision which appears to take the opposite view is *Lalithambal Ammal* v. *Guardian of India Insurance Co., Ltd.*(1) where the policy contained practically the same provision about payment to the wife in case she survived the insured before the policy became mature and it was held that there was no vested interest of the wife in the policy till the death happened and that the assignment of the policy made by the insured was valid. The decisions however which were relied upon, namely, *In re Ioakimidis' Policy Trusts: Ioakimidis* v. *Hartcup*(2), *In re Fleetwood's Policy*(3) and *Cousins* v. *Sun Life Assurance Society*(4), were all cases in which it was held that there was a trust in favour of the wife. Where there is a trust the insured cannot deal with the policy as he likes. This is clear from the

(1) (1937) 1 M.L.J. 735.
(2) [1925] 1 Ch. 403.
(3) [1926] 1 Ch. 48.
(4) [1933] 1 Ch. 126.

provisions of section 6 of the Married Women's Property Act. Once it is found that a policy of insurance effected by a married man on his own life was for the benefit of his wife, then the section says that it shall be deemed to be a trust and enure for the benefit of the wife according to the interest so expressed and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors o form part of his estate. The section also indicates the person to whom in such a case the sum secured by the policy has to be paid, namely, the Official Trustee. The only way in which a policy of this kind can be attacked by a creditor is by proving that it was effected for the purpose of defrauding the creditors. No such attempt has been made in this case. I am of opinion that if the words found in the policy lead to the conclusion that the policy was for the benefit of the assured's wife, then according to section 6 of the Married Women's Property Act it shall be deemed to be a trust and enure as such so long as the wife is alive. This does not mean of course that the wife is entitled to claim anything by virtue of the above trust straightaway. The benefit which accrues to her under the trust will be subject to the other conditions in the policy but the trust is impressed upon the policy from the moment the policy comes into existence, and it cannot in my opinion be said that the trust comes into existence for the first time only after the event which is to determine the payment under the policy takes place. In other words, the wife will not be entitled to claim anything under the policy unless the event referred to in the policy happens, but

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the trust is brought into existence the moment the policy is taken out for the benefit of the wife. That being the case, the trust attaches itself to the policy from the very moment of its birth, and the policy cannot thereafter be looked upon as available to the creditors regardless of the trust imposed upon it. The position therefore in law is that there is a trust impressed on the policy in favour of the wife ; at the same time it cannot be said that the insured has no interest in the policy, because in a certain event, namely, after the expiry of fifteen years from the date of the policy the money thereunder is to be paid to him if he is then alive, and it is only in the event of his death within this period that the money could be paid to his widow if she is then alive. The policy thus constitutes property in which both the insured and his wife have an interest. It is not possible to say at present what that interest is because it is entirely dependent on the events above referred to. In these circumstances it is not open to the creditor to treat the policy as being the property of his debtor and to require an assignment of it and to compel the Insurance Company to acknowledge such an assignment as valid and binding upon them. For these reasons, I am of opinion that the order passed by the District Judge was right and that the application of the petitioner was rightly dismissed. The appeal and the revision petition are therefore dismissed with costs in the appeal.

V.V.C.