

and it follows that the appellant cannot be proceeded against.

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In the result the appeal is allowed and the application will stand dismissed against the appellant with costs throughout. The Advocate's fee is in the circumstances of the case fixed at Rs. 250.

A.S.V.

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## APPELLATE CIVIL.

*Before Mr. Justice Burn and Mr. Justice Lakshmana Rao.*

MINOR S. VENKATASUBRAMANIA SARMA *alias*  
RATNAM BY GUARDIAN SUBRAMANIA SARMA (RESPONDENT—  
JUDGMENT-DEBTOR), APPELLANT,

1937,  
September 23.

v.

THE UNITED PLANTERS' ASSOCIATION OF SOUTH  
INDIA INCORPORATED HAVING ITS REGISTERED OFFICE AT  
GLENVIEW, COONOR, THE NILGIRIS (PETITIONER—  
DECREE-HOLDER), RESPONDENT.\*

*Married Women's Property Act (III of 1874), sec. 6—“Policy of insurance” in—Meaning of—Trust to arise under that section—Condition.*

The expression “policy of insurance” in section 6 of the Married Women's Property Act must be taken in the ordinary meaning of those words and cannot be taken as including the proposal filled in by the insurer and the prospectus issued by the company.

For a trust to arise under section 6 of the Married Women's Property Act it must appear on the face of the policy that the policy was effected for the benefit of the insurer's wife, or wife and children, or any of them.

Where the only words which were found in the column of the policy “To whom payable” were: “The proposer's

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\* Appeals Against Orders Nos. 16 and 56 of 1936.

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assigns or his proving executors or administrators or other legal representatives who shall take out representation from any British Court to his estate or limited to the moneys payable under this policy",

held that there was nothing on the face of the policy to indicate that the policy was effected for the benefit of the insurer's wife, or wife and children, or any of them.

*Krishnamurthy v. Anjappa*(1) approved. *Abhiramavalli v. Official Trustee, Madras*(2) considered.

APPEALS against the order of the Court of the Subordinate Judge of Coimbatore dated 26th August 1935 and made in Execution Petition Register No. 349 of 1935 in Original Suit No. 261 of 1934.

*D. Ramaswami Ayyangar* and *T. P. Kannabiran* for appellant.

*S. Srinivasa Ayyar* for respondent.

BURN J.

The JUDGMENT of the Court was delivered by BURN J.—These two appeals are preferred against the order of the learned Subordinate Judge of Coimbatore passed on Execution Petition Register No. 349 of 1935 in Original Suit No. 261 of 1934. Original Suit No. 261 was a suit filed by the United Planters' Association of South India against a minor, S. Venkatasubramania Sarma, by his guardian. The suit was based upon the allegation that the father of the minor, Sundareswara Sarma, who had been employed as an accountant by the Association, had misappropriated Rs. 7,500 of the Association's money. A decree was passed in favour of the Association against the separate assets of the deceased Sundareswara Sarma, if any, in the hands of the

(1) (1936) 71 M.L.J. 39.

(2) (1931) I.L.R. 55 Mad. 171.

minor defendant. The Association got an attachment before judgment of three sums, viz., (i) a sum of about Rs. 500 representing the contributions of Sundareswara Sarma to the Association's Provident Fund; (ii) an insurance policy for Rs. 1,000; and (iii) an insurance policy for Rs. 4,000. Both the policies were issued by the Oriental Government Security Life Assurance Company Limited and copies of the policies were filed as Exhibits I and II. The learned Subordinate Judge held that the amount of Rs. 500 representing Sundareswara Sarma's contributions to the Provident Fund could not be proceeded against and he came to the same decision with regard to the amount of Rs. 4,000 due under Policy No. 353009, but he held that the amount of Rs. 1,000 covered by Policy No. 123164 could be proceeded against. The learned Subordinate Judge said in his judgment that it had been fairly conceded on behalf of the defendant that the sum of Rs. 1,000 could be proceeded against. Mr. Ramaswami Ayyangar, who appears for the appellant in Appeal Against Order No. 16, says that the guardian of the minor defendant did not give the Vakil in the lower Court any authority to make any such concession. We must take the learned Judge's observation as representing the fact that the Vakil, whether with or without authority, did make that concession, but it is not necessary to embark upon a discussion of whether the Vakil had authority to make such a concession since we propose to consider that appeal also on its merits. Appeal No. 56 is filed by the Association from the decision of the learned Judge holding that the decreeholder was not entitled to proceed against the

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amount of the policy for Rs. 4,000 and the amount in the Provident Fund.

With regard to the amount in the Provident Fund, we agree with the learned Subordinate Judge. An attempt was made to argue that the deceased Sundareswara Sarma had been dismissed from the Association's service before he died. The learned Subordinate Judge refused to allow that point to be raised before him. He said that if this were the fact, it ought to have been stated when the decree-holder first sought to attach the property. He says in paragraph 7 that it transpired at the trial that the deceased died while he was still in the service of the Association. This we are told is incorrect, but we note that the judgment in the suit itself begins with a recital that the Association sued to recover a certain sum of money from the son of Sundareswara Sarma "who was employed under the Association as an accountant from 1927-28 till his death in 1934". We therefore follow the learned Subordinate Judge in declining to allow it to be argued on behalf of the Association that Sundareswara Sarma was dismissed before he died. This being so, we are of opinion that the rules of the Provident Fund are such that Sundareswara Sarma's contributions to the Provident Fund are not liable to attachment to defray his debts any more than the contributions of the Association itself. In fact, if it be taken that Sundareswara Sarma died in service, it is not really possible to maintain that his contributions were liable to attachment.

The real contest is with regard to the two policies of insurance. We are of opinion that there is no difference between the two. Both of

them are liable for the debts of Sundareswara Sarma, or neither. The learned Subordinate Judge seems to have been influenced by the concession already referred to when he held that the policy for Rs. 1,000 could be proceeded against. With regard to the policy for Rs. 4,000, he has referred to a pamphlet Exhibit III issued by the Oriental Government Security Life Assurance Company Limited. In that pamphlet the policy in the form Exhibit II is advertised as providing the most practical form of protection obtainable for the wife and family of the assured. The policy is called a perfect protection policy. The learned Subordinate Judge after reading the provisions comes to the conclusion that the policy

“is more or less on a line with Life Assurance Policies covered by the Married Women’s Property Act and that the policy is covered by the ruling in *Abhiramavalli v. Official Trustee, Madras*(1).”

Section 6 of the Married Women’s Property Act is quite definite. It runs as follows :

“A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, 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, or form part of his estate.”

If the amounts of these policies are to be saved for the minor defendant in this case, it must be because they come strictly within the terms of section 6 of the Married Women’s Property Act. It will not do to say, as the learned Subordinate Judge says, that these policies are “more or less on

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a line with Life Assurance Policies covered by the Married Women's Property Act".

Now it cannot be disputed that on the face of these policies themselves there is no expression that they are for the benefit of the wife or of the wife and children of the insurer. Mr. Ramaswami Ayyangar, for the appellant in Appeal Against Order No. 16, realising this wishes to contend that the policy does not mean merely the policy as issued by the company but must be taken as including the proposal filed in by the insurer and also, if necessary, any prospectus issued by the company. He relies upon the decision in *Oriental Government Security Life Assurance Company, Limited v. Narasimha Chari*(1). We are of opinion that this case has no bearing upon section 6 of the Married Women's Property Act. Although for certain purposes in cases of dispute between the insurer and the insured it may be necessary to look into the proposal or the prospectus or even, as stated in *Oriental Government Security Life Assurance Company, Limited v. Narasimha Chari*(1), to construe the prospectus as though it were part of the policy, we think the terms of section 6 of the Married Women's Property Act are clear and unambiguous and that the expression "policy of insurance" in that section is to be taken in the ordinary meaning of those words. The provision was passed in order to create a trust in favour of a wife or wife and children. For this purpose it is enacted that the policy which is to create such a trust must be "expressed on the face of it" to be for the benefit of the insurer's wife or wife and children. This we think is clearly intended as

(1) (1901) I.L.R. 25 Mad, 183.

*inter alia* a measure of protection for persons who might be induced to take an assignment of the policy. If there is an expression on the face of the policy that the policy is for the benefit of the insurer's wife or wife and children, the prospective assignee will be put on his guard. This would certainly not be the case if the term "policy of insurance" were interpreted to mean the proposal as well as the company's prospectus. This view is supported by the decision of VENKATASUBBA RAO J. in *Krishnamurthy v. Anjappa*(1). In that case, the amount of the policy was expressed to be payable "to the person or persons legally entitled thereto". In the present case, in the column "To whom payable" in Exhibit II we find the words :

"The proposer's assigns or his proving executors or administrators or other legal representatives who shall take out representation from any British Court to his estate or limited to the moneys payable under this Policy".

There is nothing on the face of either of these policies to indicate that the policies were effected for the benefit of the insurer's wife, or wife and children, or any of them. Mr. Ramaswami Ayyangar wishes us to admit in evidence copies of the proposals made by the insurer in pursuance of which these policies were issued. We are refusing to admit those copies since we find that the requirements of Order XLI, rule 27, Civil Procedure Code, are not fulfilled. There is no allegation that they were shut out by the lower Court and we do not find them necessary in order to enable us to pronounce judgment. We think it is right to say, as VENKATASUBBA RAO J. said

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in the case already referred to, that under section 6 of the Married Women's Property Act

"for a trust to arise it must appear on the face of the document that the policy was effected for the benefit of the wife, or the wife and children, or any of them".

We have been referred to the case of *Abhiramavalli v. Official Trustee, Madras*(1) in which MADHAVAN NAIR J. construed in favour of the wife a life insurance policy in which it appeared that the amount was payable "to the assured or his wife if he predeceases her". Since those words did appear on the face of the policy in that case we do not think that it is necessary to discuss the judgment of MADHAVAN NAIR J., but we are quite clear that we are not prepared to go even further than he went. It would be necessary to go a great deal further in this case in order to accept the contentions of Mr. Ramaswami Ayyangar, because neither of the policies in this case mentions the wife or the children of the insurer.

It follows that Appeal Against Order No. 16 of 1936 is dismissed with costs and Appeal Against Order No. 56 of 1936 is allowed with regard to the amount of the Policy No. 353009 and dismissed with regard to the amount of the Provident Fund. The appellant and the respondent in Appeal Against Order No. 56 of 1936 will pay and receive costs proportionate to their success.

Solicitors for respondent :—*King & Partridge.*

A.S.V.