APPELLATE CIVIL.

Before Mr. Justice Varadachariar and
Mr. Justice Abdur Rahman.

NINKILERI LAKSHMIKUTTY KETTILAMMA (THIRD RESPONDENT), APPELLANT,

1938, December 8.

v.

THEKKE MADATHIL VISHNU NAMBISAN (PETITIONER), RESPONDENT.*

Insurance policy—Endowment insurance policy payable on a specified date or earlier on assured's death—Assignment of—Present transfer of amount due under policy in favour of assignee with provision for reverter to assignor in certain contingencies—Assignment when amounts to.

V, who had in 1927 obtained an endowment insurance policy payable in 1952 or on his death earlier, assigned the policy to his wife (appellant) in July 1933 by an endorsement on the policy itself. The assignment was duly communicated to the insurance company. V died subsequently in 1933 and after his death a decree was passed against the appellant as his legal representative. The question was whether the policy amount constituted "assets" of V in the hands of the appellant and could therefore be attached in execution of the said decree or whether by reason of the assignment the policy amount belonged to the appellant and was therefore not attachable in execution of the said decree. The endorsement ran as follows:

" . . . I do hereby assign the benefit of all moneys to become payable under the policy . . . to my wife and declare that her receipt shall be a sufficient discharge to the company for the same, provided however that in the event of my wife predeceasing me or in the event of my surviving the date on which the said policy, if so expressed, would mature, the benefit of the policy and the right to receive

* Appeal Against Appellate Order No. 56 of 1935.

LAKSHMIKUTTY v. NAMBISAN.

moneys thereunder shall revert to me as if this assignment had not been made."

Held that on its true construction the endorsement operated as a present transfer in favour of the assignee, though provision was also made for a reverter to the assignor in certain contingencies, and that in the events that had happened the policy amount belonged to the appellant and did not constitute "assets" of her husband in her hands and that it could not therefore be attached in execution of the said decree.

APPEAL against the order of the District Court of North Malabar at Tellicherry, dated 24th September 1934 and made in Appeal Suit No. 111 of 1934 preferred against the order of the Court of the District Munsif of Kuthuparamba in Register Execution Petition No. 791 of 1933 (Summary Suit No. 544 of 1933, District Munsif's Court, Cannanore).

O. T. G. Nambiar and *N. T. K. Nambiar* for appellant.

P. Govinda Menon for respondent.

VARADACHARIAR J.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—The only question for decision in this miscellaneous appeal is whether a certain insurance policy amount which has been sought to be attached by the respondent, decree-holder, can be held to be "assets" of the late Kerala Varma Raja in the hands of the appellant.

The appellant is the widow of Kerala Varma Raja. The policy in question was an endowment policy obtained by the deceased in 1927 and was payable on 5th April 1952 or on the death of the assured earlier. On 3rd July 1933 the assured assigned this policy by an endorsement on the policy itself. This assignment was duly communicated to the insurance company and there registered, though as usual the

company guarded itself from admitting the validity of the assignment. The assured died in 1933 and the decree under execution was passed against the appellant as his legal representative. The question does not now arise between the company and the assignee but between the assignee and a person who has obtained a decree against the assets of the assured.

The Court of first instance released the policy amount from attachment on the ground that by reason of the assignment the policy amount belonged to the assignee and did not form part of the estate of the assured at his death. The learned District Judge reversed this decision on the ground that the assignment was not an absolute or outright assignment taking effect at once but was only contingent; he thought it followed that the amount due to the assured under the policy formed part of the estate of the deceased. The decision of the learned District Judge is opposed to the judgment of this Court in *Yacoob Sahib* v. *Pacha Bibi*(1). The only other reported decision on the point which has been brought to our notice is a decision of the Sind Judicial Commissioners' Court in *Shamdas* v. *Savitribai*(2) and the principle of that decision is also in favour of the appellant's contention.

Learned Counsel for the respondent has contended that the endorsement on the policy is no more than a mandate or at best it operates only as a testamentary transfer and that no interest in the policy passed to the assignee during the lifetime of the assignor. He also repeated the argument which had found favour with the lower Court that the words of transfer did not amount to an absolute interest. The endorsement,

(1) (1917) 38 I.C. 248.

(2) A.I.R. 1937 Sind. 181.

LAKSHMIKUTTY v. NAMBISAN.

VARADACHARIAR J.

which appears in a usual form suggested by the company, runs as follows:

"In consideration of natural love and affection, I do hereby assign the benefit of all moneys to become payable under the policy (reserving to myself the right to receive in cash or apply in reduction of premia any bonuses that may be declared upon such policy from time to time) to my wife and declare that her receipt shall be a sufficient discharge to the company for the same, provided however that in the event of my wife predeceasing me or in the event of my surviving the date on which the said policy, if so expressed, would mature, the benefit of the policy and the right to receive moneys thereunder shall revert to me as if this assignment has not been made."

In support of the first contention, the respondent's learned Counsel relied upon the judgment of the Court of Appeal in England, *In re Williams. Williams* v. *Ball*(1), and on some observations of the Rangoon High Court in *Ma Nu* v. *Ma Gun*(2). The language of the document which the Court had to construe in the English case was quite different, the very point made in that connection in the English case was that the endorsement relied on did not purport to *assign* at all but only purported to authorise the named person to draw the insurance amount in the event of the assured predeceasing her. It was significant that no notice of the so-called assignment had even been given to the insurance company in that case. ASHBRUY J. held that there were no words of present gift at all. In the Court of Appeal, the learned Judges were inclined to construe the so-called endorsement as a mere power of attorney. Alternatively, they added that at best it might have operated to give to the named person an interest on the death of the assured if it had complied with the

(1) [1917] 1 Ch. 1. (2) (1924) I.L.R. 2 Ran. 388.

formalities required by law for a will. No help can be derived from that judgment in the construction of the terms of the endorsement in the present case, because the words here used are that the assured doth "hereby assign the benefit of all moneys, etc., to the wife". On these words it cannot be said that the endorsement amounted to a mere power of attorney or that the transfer was one *in futuro*. In the Rangoon case, *Ma Nu* v. *Ma Gun*(1), the argument turned on the effect of a mere *nomination*. Reliance was placed by learned Counsel before us on the way that the observations in *In re Williams. Williams* v. *Ball*(2) had been understood by the learned Judges of the Rangoon High Court. As we have dealt with the English case ourselves, the observations of the Rangoon High Court on that case cannot carry the matter further.

It was next argued that because in certain contingencies the assignee will not on the terms of the endorsement be entitled to receive the policy amount or the assignor might become entitled to recover the same, the transaction was revocable only and in that sense the disposition, if any, was only testamentary. This argument seems to us to confound a contingent transfer with a revocable transfer. Even this distinction is immaterial here, because on its true construction the endorsement in this case operates in our opinion as a *present* transfer in favour of the assignee though provision has also been made for a reverter to the assignor in certain contingencies. The provision for *reverter* only emphasises the immediate operativeness of the transfer. If the events that have happened have brought the reverter clause into operation, the creditors of the assured would no doubt be entitled

(1) (1924) I.L.R. 2 Ran. 388. (2) [1917] 1 Ch. 1.

LAKSHMIKUTTY v. NAMBISAN. — VARADACHARIAR J.

to treat the policy amount as having become part of the estate of the assured. But it cannot be disputed that in the events that have happened the assignee is entitled to recover the policy amount and there is no scope for the operation of the reverter clause.

It was finally contended that an assignment of an actionable claim within the meaning of section 130 of the Transfer of Property Act must be "absolute" and that the assignment in the present case is not absolute. Reliance was placed in this connection on the observations of BEAMAN J. in *Haridas Lalji* v. *Narotam*(1). The learned Judge has not expressed any final opinion on this point in the case referred to. The question of the "absolute" character of the transfer may be material when there is a dispute as to the transferee's right to sue the insurance company; no such question arises here. We may however observe that there is no possibility in this case of the assignor and the assignee having fractional rights in the policy amount *at one and the same time*. The only qualification on the rights of the transferee (apart from the bonus amount with which we are not now concerned) is by way of a defeasance clause (cf. section 31 of the Transfer of Property Act and section 134 of the Indian Succession Act). The result is that so long as the transferee's interest exists, she has the whole interest and when the defeasance clause comes into operation the interest of the person who takes under the defeasance clause is equally an absolute interest. We do not find anything in the terms of section 130 of the Transfer of Property Act or in the principle underlying it that excludes a transfer of this kind from its scope.

(1) (1911) 14 Bom. L.R. 237, 245.

As desired by Mr. Govinda Menon, the learned Counsel for the respondent, we wish to make it clear that this judgment will not apply to any amount that the deceased might be entitled to receive by way of bonus in respect of the policy, because the endorsement expressly reserves to the assignor the right to the bonus, so that he may, if he so desired, apply it in reduction of premia. If the bonus has been appropriated by the assured himself towards premia due on the policy, there will be nothing left for the assured or his creditors to claim. If, on the other hand, there is any sum remaining payable by way of bonus, that cannot be held to have passed under the assignment.

We set aside the decision of the learned District Judge and restore that of the District Munsif with costs here and in the Court below.

A.S.V.