APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice, and Mr. Justice Stodart.

M. MON SINGH (THIRD RESPONDENT), APPELLANT,

v.

MOTHI BAI (PETITIONER), RESPONDENT.*

1935, December 13.

Provident Fund amount—Nominee's death before nominator—Right to amount on death of nominator—Heir of nominee, if has—Rule of the Provident Rules a reproduction of sec. 5 of the Provident Funds Act (XIX of 1925).

An employee of a railway company nominated the respondent's husband as the person to whom the amount standing to the employee's credit in the Provident Fund of the company should be paid in the event of the employee's death while still in service. The respondent's husband predeceased the employee and a claim made by the respondent to the Provident Fund amount on the death of the employee was resisted on the ground that the effect of nomination was merely to entitle the nominee if he were alive at the death of the subscriber to draw out the money. The relevant rule of the Provident Fund Rules reproduced section 5 of the Provident Funds Act.

Held that the "absolute right to receive" the money which was conferred by the Provident Fund Rules meant a vested right in the money which passed to the heir of the nominee at his death and that the respondent was therefore entitled to the amount in question.

Bennett v. *Slater*, [1899] 1 Q.B. 45, and *Redman, In re. Warton* v. *Redman*, [1901] 2 Ch. 471, relied upon.

Ma Nu v. *Ma Gun*, (1924) I.L.R. 2 Rang. 388, and *Ma Kyway* v. *Ma Mi Lay and another*, (1928) I.L.R. 6 Rang. 682, referred to.

APPEAL against the order of the District Court of Chingleput in Original Petition No. 117 of 1931 dated 23rd February 1934.

* Appeal Against Order No. 354 of 1934.

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S. T. Srinivasagopalachari for *K. Manavalan* for appellant.

M. S. Venkatarama Ayyar for respondent.

STODART J.

The JUDGMENT of the Court was delivered by STODART J.—This is an appeal against the order of the learned District Judge, Chingleput, granting Mothi Bai, the respondent here, a succession certificate entitling her to collect from the Madras and Southern Mahratta Railway Company the sum of Rs. 3,038, being the provident fund amount standing to the credit of one Lakshman Singh, a servant of the company, who died in 1931. Mothi Bai is the widow and heir of one Bhavani Singh whom Lakshman Singh nominated as the person to whom the amount standing to his credit should be paid in the event of his death while still in service. But Bhavani Singh died in 1921. The certificate has been granted to the respondent as his heir. The appellant, who is the heir of the deceased subscriber, contended before the learned District Judge that the effect of nomination is merely to entitle the nominee if he is alive at the death of the subscriber to draw out the money. That contention is pressed on appeal. The order of the learned District Judge is :

> "Having regard to the provisions of the Provident Fund Rules, I think *prima facie* the petitioner (respondent here) is entitled to the certificate."

Rule 23 of the rules which reproduces section 5 of the Provident Funds Act, leaving out words which are irrelevant, is :

> "(i) Notwithstanding any disposition, whether testamentary or otherwise, by a depositor of the sum standing to his credit in the Fund, any nomination in the prescribed declaration form which purports to confer upon any person the right to receive . . . such sum on the death of the depositor

shall be deemed to confer such right absolutely until such nomination is varied or expressly cancelled by the depositor.

(ii) Notwithstanding anything contained in the Succession Certificate Act of 1889, any person nominated in the declaration form shall on the death of a depositor be entitled to the grant of a certificate under that Act entitling him to receive payment of such sum and such certificate shall not be deemed to be invalidated or superseded by any grant to any other person of Probate or Letters of Administration to the Estate of the depositor."

The short question for decision is: Does this "absolute right to receive" the money which is conferred by these provisions mean a vested right in the money, which passes to the heir of the nominee at his death? We answer this question in the affirmative.

Learned Counsel for the appellant relies on a decision of a single Judge of the Lahore High Court in *Hardial* v. *Janki Das*(1) where it is held (by ADDISON J.) that

"the object of the nomination system is merely to designate some person to whom the Provident Fund money due to the subscribers may be paid".

But that case refers to the fund of a municipal corporation, the rules of which are not before us, and clearly distinguishes another case, where the declaration filed purported to be a will and to dispose of the money absolutely in favour of a nominee. Here also the declaration appended to the rules of the Fund is in the form of a will. It begins:

"I hereby declare that in the event of my death the undermentioned person shall be entitled to receive payment of my deposit in the Railway Provident Fund."

(1) (1928) 108 I.C. 894.

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At the foot of it is a note :

"If the deposit is to be apportioned among two or more nominees a separate declaration should be given in respect of each."

This, in our view, shows that the nominee or nominees are persons who are intended to acquire a title to the money and not merely persons designated to give a valid quittance to the company. Another note provides that the declaration shall become null and void and a fresh declaration shall be required in the case of the marriage or remarriage of a member who is not a Hindu, Muhammadan, Buddhist, etc., that is to say, a British employee of the company. Also, with a view obviously of applying to the case of a British employee, the declaration form itself conforms as regards execution and attestation to the provisions of an English will.

For the respondent, two recent cases decided by Benches of the Rangoon High Court are relied upon. *Ma Nu* v. *Ma Gun*(1), which was decided prior to the passing of the Provident Funds Act, decides that the nomination in that case amounted to a testamentary disposition and was invalid since the nominee was a Burman Buddhist, who had no power to make a will. In the second case, *Ma Kyway* v. *Ma MiLay and another*(2), it was held that the effect of section 5 of the Provident Funds Act is that a nomination is valid in spite of any prohibition in the personal law of the person making the nomination. PRATT C.J. and ORMISTON J. make it clear that in their opinion the nominee is not merely a person designated to receive the money and give the railway company

(1) (1924) I.L.R. 2 Rang. 388. (2) (1928) I.L.R. 6 Rang. 682.

a clear quittance but a beneficiary. They state the case thus :

"The deceased was an employee of the Burma Railways. He nominated his sister Ma Kyeve as his beneficiary."

The view contended for by the appellant that the nominee is a person who shall receive the money in the first instance and administer it for the benefit of the dependants or heirs of the deceased seems to us to be contrary to the rules framed by this company. The Act in section 3 provides that the company may make a rule prescribing that some particular dependants of the subscriber shall be paid the amount standing to his credit in the event of his death during the period of his employment. But this company has made no such rule. On the contrary, in setting out in order the persons to whom the Provident Fund amount is payable, the rules (rule 22) enumerate them as follows :

(*a*) a dependant to whom the money is payable under the rules and who is nominated in the declaration ;

(*b*) any person nominated to receive the money in the declaration and so on.

It appears therefore that the money is not payable to a dependant as such unless the dependant is also nominated in the declaration. And Rule 21 indicates precisely the nature and effect of the declaration. It is :

"When a deposit account is first opened, the member concerned shall be required to give a declaration in Form G-45 (printed as an annexure to these rules) particularising the person or persons by whom he is desirous that the whole or any portion of his deposit shall be received in the event of his death and the deposit shall be payable in accordance with such declaration. The declaration will remain in force until it is revised or cancelled by means of a notice in writing given to the Chief Auditor."

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Learned Counsel for the appellant contends that section 5 of the Act by which nomination shall be deemed to confer absolutely the right to receive the money does not vest the title to the money in the nominee, because the words "vest the money in the nominee" are not expressly used, while such words are used in another section of the Act, namely, section 3. Section 3 provides that when the sum to the credit of the subscriber at his death is payable under the rules of the Fund to any dependant of the deceased, such sum shall—with certain reservations—vest in the dependant free from any debt incurred by the deceased or incurred by the dependant before the death of the subscriber. It appears to us that the use of the expression "vest" in this section is appropriate and convenient to describe the absolute right which such a dependant has to the money. The fact that the word occurs in section 3 does not mean that an absolute right cannot be conferred by the provisions of a section in which the word is not used. In England, under the Friendly Societies Act, 1875, as amended by the Act of 1883, a member of a society can nominate any person to receive a sum not exceeding £100 out of the money payable at his death. It has been held in *Bennett* v. *Slater*(1) that such a nomination cannot be revoked by will but only in the manner laid down in the Act and that the sum so made payable is not part of the residuary estate of the deceased. And in the case of *Redman, in re*: *Warton* v. *Redman*(2), when the nominee died before the nominator and his representative

(1) [1899] 1 Q.B. 45. (2) [1901] 2 Ch. 471.

claimed the money, the decision of KEKEWICH J. is :

"I cannot see why the estate of a nominee who dies before the nominator should be deprived of the benefit intended to be conferred, even although his death may be unknown to the nominator . . . . . I do not see anything in the wording of the rule to prevent the policy money being due to the legal personal representative of the nominee."

Compare also the observation of A. L. SMITH L.J. in *Bennett* v. *Slater*(1) :

"I may in the first place remark that where there has been a nomination as in the present case, until that nomination has been revoked I think that the nominee and not the nominator is the person beneficially interested in the money."

Our conclusion therefore is that on the nomination of the respondent's husband a right became vested in him to the money which might be found to the credit of Lakshman Singh in the event of his dying during his employment.

The appeal fails and is dismissed with costs.

A.S.V.

(1) [1899] 1 Q.B. 45.