

APPELLATE CIVIL.

Before Mr. Justice Rangnekar and Mr. Justice Divatia.

AHMAD ABDUL RAZZAK AND OTHERS (PLAINTIFFS) v. JAMALA BINT
MEHDI (DEFENDANT).*

1935
January 17

Provident Funds Act (XIX of 1925), section 2, clause (c) and section 3, sub-section (2)
—“*Dependant*”, *meaning of—Provident Fund—Deceased Mahomedan nominating his widow to receive amount—Suit by nephews for share in Fund—Suit bad.*

A Mahomedan died leaving him surviving the plaintiffs, who were his nephews and the defendant, his widow. He was a subscriber to the Provident Fund of the Aden Port Trust, and at his death there was a sum standing to his credit in the fund. Under the rules of the fund the subscriber had nominated the defendant as a nominee and as the person entitled to receive the whole amount due to him. Plaintiffs having sued for a declaration that as heirs of the deceased, they were entitled to a share in the amount of the fund:

Held, (1) that the defendant was absolutely entitled to the amount standing in the fund to the credit of the deceased subscriber;

Ma Kyway v. Ma Mi Lay,⁽¹⁾ referred to;

(2) that the amount did not form part of the estate of the deceased and the plaintiffs' suit was bad.

CIVIL REFERENCE made by E. Weston, District and Sessions Judge, Aden.

Suit for share in Provident Fund.

The material facts are set out in the judgment of the Court.

No appearance for the plaintiffs.

P. A. Dhruva, for the defendant.

RANGNEKAR J. This is a civil reference by the District and Sessions Judge of Aden under section 8 of Regulation VI of 1933 (Aden) in a suit pending before him. That section provides:—

“(1) Where, before or on the hearing by the District Judge of a suit or an appeal in which suit or appeal the decree is not subject to appeal, or where, in the execution

*Civil Reference No. 2 of 1934.

⁽¹⁾ (1928) 6 Rang. 682.

1935

—
 AHMAD
 ABDUL
 "v."
 JAMALA
 —

Rangnekar J.

of any such decree, any question of law or usage having the force of law arises on which the District Judge entertains reasonable doubt, the District Judge may either of his own motion or on the application of any of the parties draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement with his own opinion on the point for the decision of the High Court of Judicature at Bombay."

Accordingly the learned District Judge has made this reference. The suit which has given rise to this reference was brought by the nephews of one Idriss Abdul Kadir against his widow. Idriss Abdul Kadir was an employee of the Port Trust at Aden and died on January 7, 1933, and there is no question that the parties are his heirs under the Mahomedan law. He was a subscriber to the provident fund of the Aden Port Trust, and on his death there was a sum of Rs. 4,070 and odd standing to his credit in the fund. Under the rules of the fund the subscriber had nominated his widow, the defendant, as a nominee and as the person entitled to receive the whole amount due to him. The plaintiffs claim that although the widow was entitled to recover the amount in the first instance from the fund, the amount was divisible under the Mahomedan law as being part of the estate of the deceased Idriss among his heirs.

The question which arose for decision and which has been referred to us is, whether the provident fund forms part of the estate of the deceased and as such devolves on his heirs in accordance with Mahomedan law, or, whether by reason of the provisions of the Provident Funds Act and the rules made thereunder it vested in the widow absolutely free from any claim from the other heirs of the deceased subscriber.

Section 3 of the Provident Funds Act, XIX of 1925, sub-section (2), provides, omitting unnecessary words, as follows:—

"Any sum standing to the credit of any subscriber to, . . . any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the

subscriber, . . . or to such person as may be authorised by law to receive payment on his behalf, shall, subject to any deduction (to which it is not necessary to refer), . . . 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 . . . ”

1935

ARMAD
ABDUL
?.
JAYALAL

Rangnekar J.

“ Dependant ” is defined by section 2, clause (c), as meaning a wife, husband, parent, child, etc. It is clear that according to this definition the plaintiffs do not fall within the expression “ dependants ” under the Act. It is also clear, from sub-section (2) of section 3, that the amount standing to the credit of the subscriber vests in the dependant, and as in this case the dependant was nominated by the subscriber himself as the person entitled to receive the fund on his death, it would vest in the widow as a dependant and the nominee. Section 5 deals with the rights of the nominees. It runs in the terms following :—

“(1) Subject to the provisions of this Act, but otherwise notwithstanding anything contained in any law for the time being in force or any disposition, whether testamentary or otherwise, by a subscriber to, or depositor in, a Government or Railway Provident Fund of the sum standing to his credit in the Fund, or of any part thereof, 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 such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely, until such nomination is varied . . . ”

The rest of the section is not material. Now, although the section refers to a Government or a railway provident fund, section 8 says that any provident fund established for the benefit of its employees by any local authority shall be governed by this Act as if such provident fund were a Government provident fund and such local authority were the Government.

It was admitted in this case that the provident fund of the Port Trust is one in respect of which a declaration under section 8 of the Provident Funds Act could be made and was made. Having regard to the clear terms of the

1935

AHMAD
ABDUL
v.
JAMALA

Rangnekar J.

provisions of the Act, we have not the least doubt that the nominee of the subscriber is absolutely entitled to the amount standing in the fund to the credit of the deceased subscriber. Section 5 gives the nominee the right to receive the amount absolutely. Section 3 says that the fund vests in the dependant and exempts it from any debt which the deceased himself may have contracted or which the dependant may have contracted before the death of the subscriber. That being so, it is clear that it does not form part of the estate of the deceased and the plaintiffs' suit was bad.

The view which we have taken is supported by a decision of the Rangoon High Court in *Ma Kyway v. Ma Mi Lay*.⁽¹⁾ The contest there was between a sister of the subscriber who was his nominee and his own widow, and it was held that the sister as the nominee defeated the title of the widow, even though she was a dependant.

In this view, we answer the question raised by the District and Sessions Judge on the first part in the affirmative. The second part of the question is in the negative. We would alter it and the question would be whether the sum in question does form part of the estate of the deceased, and we answer it in the negative. Accordingly the case will go down for final disposal.

As the reference was made on the application of the plaintiffs, it seems to me that the costs of this reference must be paid by the plaintiffs.

DIVATIA J. I agree.

Answer accordingly.

Y. V. D.

⁽¹⁾ (1928) 6 Rang. 682.