

Saroj (Smt.) v. Smt. Murti Devi and others (S. S. Sodhi, J.)

after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed or any other place which it is in his opinion necessary to view for the purpose or properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

- (2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of costs."

Detailed reasons have been given in the Division Bench decision and we find ourselves in agreement with the same.

(5) For these reasons, we hold that an order passed by a Magistrate under Sections 133/138 of the Code is not vitiated if he personally inspects the spot for a proper appreciation of the evidence on record. The above Single Bench decisions do not contain a correct statement of law and the same are, therefore, overruled. The order of the learned Additional Sessions Judge, Jalandhar, Annexure P-2, dated January 23, 1988, is hereby quashed and it is directed that the learned Additional Sessions Judge shall readmit the revision petition on its original number and dispose of the same on merits according to law within three months from the date of receipt of records. Parties through their counsel are directed to appear before him on November 16, 1990.

P.C.G.

Before S. S. Sodhi, J.

SAROJ (SMT.),—*Petitioner.*

versus

SMT. MURTI DEVI AND OTHERS,—*Respondents.*

Civil Revision No. 3025 of 1984.

14th November, 1990.

Code of Civil Procedure, 1908 (V of 1908)—S. 115—Army Group Insurance Scheme—Rls. 9, 10 & 11—Object of Scheme to provide financial assistance to families of Army Personnel—Widow named

as nominee—Application by mother for issuance of succession certificate—Widow held entitled to insurance amount.

Held, that in the face of the clear provisions of the Army Group Insurance Scheme, there can be no escape from the conclusion that in the presence of the widow, the mother has no right to claim any amount payable thereunder.

(Para 6)

Held, that the matter has thus to be considered and decided in the context of the provisions of the Army Group Insurance Scheme and these, as mentioned earlier, clearly provide that it is the widow who is entitled to the amount payable thereunder and not the mother.

(Para 9)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri V. K. Kaushal, District Judge, Rohtak, dated 6th November, 1984, reversing that of the Court of Shri B. P. Jindal, HCS, Sr. Sub Judge, Rohtak, dated 28th January, 1984 allowing the appeal and setting aside the impugned order and dismissing the application filed by Shrimtai Saroj and her husband Munshi Ram, for the grant of Succession certificate, and holding that only Smt. Murti Devi, widow of the deceased is entitled to get the entire amount of insurance money with no order as to cost.

Claim : Application for grant of succession certificate.

Claim in Revision : For reversal of the order of the Lower appellate Court.

S. S. Ahlawat, Advocate, for the Petitioner.

H. S. Hooda, Sr. Advocate, (Mahavir Sundhu, Advocate, with him), for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) The contest here is between the widow and the mother of an Army Sepoy Mahinder Singh, with regard to the amount that became payable consequent upon his death under the Army Group Insurance Scheme.

(2) On the death of Mahinder Singh on April 29, 1982, a sum of Rs. 50,000 become payable to his heirs under the Army Group

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Insurance Scheme. An application was filed for the grant of a Succession Certificate in respect of this amount, by his parents Smt. Sharjoo and Munshi Ram. This application was contested by Murti Devi, the widow of the deceased on the plea that being the nominee of the deceased, she alone was entitled to receive the said sum. The trial court held that both the widow and the mother being Class-I heirs under the Hindu Succession Act, were entitled to the said sum in equal shares. On appeal, however, the widow succeeded and it was held that she was entitled to the entire amount. This is what constitutes the challenge in revision now.

(3) In dealing with this matter, regard must be had to the terms and conditions of the Army Group Insurance Scheme. A reference to the Special Army Order in this behalf, shows that this Insurance Scheme was introduced in January 1976 under the authority of the Government of India, Ministry of Defence No. PCA/37586/AG/PC and JEC/9302/D (Pay/Services) dated December 15, 1975. It has been specifically pointed out there that the Scheme is totally departmental and is run by the Army Group Insurance Directorate at Army Headquarters. The main objects of the scheme being; (a) to provide speedy financial assistance to the families of those Army Personnel who may die while in service; (b) to provide lumpsum terminal benefit at the time of retirement; and (c) to provide other benefits/assistance as may be decided by the Board to trustees from time to time.

(4) Under the Army Group Insurance Scheme, it has been rendered obligatory for all ranks to make a nomination of persons who would be entitled to receive the benefits thereunder. This has been so provided by rule 9 thereof. In the case of married personnel, rule 10 lays down that the nomination has to be made in favour of only any of the following persons, namely :

- (a) Wife/husband;
- (b) Sons and daughters (including step and legally adopted children);

While, according to rule 11, besides these persons, an individual may nominate dependant parents/brothers/sisters with the provision that their aggregate share shall not exceed 20 per cent of the total benefits.

(5) Next to note is rule 43 which deals with payments of insurance claims where no nomination has been made or it does not

subsist. According to this rule, if no nomination has been made or subsists, and the deceased is survived by wife/husband/sons and daughters, it shall be paid to the widow and it is only if the wife had pre-deceased the deceased, that the amount shall be paid to his above mentioned surviving members in equal shares. Further, the parents of the deceased become entitled to this amount only if the deceased dies without leaving behind his widow and children.

(6) In the face of the clear provisions of the Army Group Insurance Scheme, there can be no escape from the conclusion that in the presence of the widow, the mother has no right to claim any amount payable thereunder.

(7) Faced with this situation, counsel for the mother sought to press in aid the provisions of Insurance Act, 1938 (Act No. IV of 1938) and the judgment of the Supreme Court in *Smt. Sarbati Devi and another v. Smt. Usha Devi* (1), where it was observed :—

“A mere nomination made under Section 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the head which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

The summary of the relevant provisions of Section 39 establishes clearly that the policy holder continues to hold interest in the policy during his life time and the nominee acquires no sort of interest in the policy during the life time of the policy holder. If that be so, on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament'. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the

(1) A.I.R. 1984 S.C. 346.

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nominee or nominees does not mean that the amount shall belong to the nominee or nominees. The language of Section 39 is not capable of altering the course of succession under law."

(8) Counsel further contended that as under the Hindu Succession Act, both the widow and the mother were Class-I heirs, they were entitled to share the amount under Group Insurance Scheme in equal shares.

(9) The contention raised by the counsel for the petitioner, though attractive, on the face of it, cannot stand scrutiny, as admittedly, the insurance in the present case was not one to which the provisions of the Insurance Act, 1938 (Act No. IV of 1938) applied. This being so, the observations of the Supreme Court in *Smt. Sarbati Devi and another case* (supra) are, therefore, clearly not applicable. The matter has thus to be considered and decided in the context of the provisions of the Army Group Insurance Scheme and these, as mentioned earlier, clearly provide that it is the widow who is entitled to the amount payable thereunder and not the mother.

(10) Such thus being the unambiguous position in law, no exception can be taken to the impugned order of the lower appellate court, which is accordingly hereby up-held and affirmed. In the circumstances, however, there will be no order as to costs.

P.C.G.

Before G. C. Mital, J.

MEGH NATH,—Petitioner.

versus

SARLA DEVI AND ANOTHER,—Respondents.

Civil Revision No. 1059 of 1989.

16th November, 1990.

East Punjab Urban Rent Restriction Act, 1949—S. 15(5)—Code of Civil Procedure, 1908 (V of 1908)—O. 18 rl. 3-A & S. 115—Strict