R

IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 22ND DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO. 100004 OF 2025

BETWEEN:

SMT ANNAPURNA,
D/O. SHARAD PATANGE
AFTER MARRIAGE
SMT. ANNAPURNA,
W/O. KANTESH KHANDAGALE,
AGE. 45 YEARS, OCC. HOUSEHOLD WORK,
R/O. H.NO. 386, VENGURLA ROAD,
SULAGA (U),
TQ. AND DIST. BELAGAVI 590001

...APPELLANT

(BY SRI. AVINASH BANAKAR, ADVOCATE)

AND:

1. KAVITA,
   W/O. KANTESH KHANDAGALE
   AGE. 45 YEARS, OCC. HOUSEHOLD WORK,
   R/O. PLOT NO. 159, VINAYAK COLONY,
   3RD CROSS, SHAHU NAGAR,
   BELAGAVI,
   TQ. AND DIST. BELAGAVI 590001.

2. PRANAV S/O. KANTESH KHANDAGALE
AGE. 23 YEARS, OCC. STUDENT,
R/O. PLOT NO. 159, VINAYAK COLONY,
3RD CROSS, SHAHU NAGAR,
BELAGAVI,
TQ. AND DIST. BELAGAVI 590001.

3. THE GENERAL MANAGER
ADITYA BIRLA SUN LIFE INSURANCE CO. LTD.

4. KASBEKAR METGUD CLINIC
REP. BY DR. BASAVARAJ H. METGUD,
SHIVAJI NAGAR, BELAGAVI,
TQ. AND DIST.BELAGAVI 590001.

...RESPONDENTS

THIS RFA IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC., PRAYING TO, SET ASIDE THE JUDGMENT AND DECREE DATED 25.11.2024 PASSED BY THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE, BELAGAVI IN OS NO. 247/2022 AND DISMISS THE SUIT OF THE PLAINTIFFS, IN THE INTEREST OF JUSTICE AND EQUTIY.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

Though this appeal is listed for admission, with consent of learned counsel for the parties, it is taken up for final disposal.

2. This appeal is filed by the appellant, who has filed I.A No.V under Order I Rule 10(2) R/w Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') for impleading Smt.Annapurna W/o Kantesh Khandagale as plaintiff No.3 in O.S No.247/2022 (P & SC No.27/2021), which is rejected and against the decree passed in the suit for issuance of succession certificate as per Section 372 of the Indian Succession Act, 1925 (hereinafter referred to as the 'Act'), the present appeal is filed.

3. The respondent Nos.1 and 2 have filed petition in P & SC No.27/2021. Later on, it was converted into O.S No.247/2022 under Section 372 of the Act, seeking succession certificate to facilitate them to receive amount payable to Kantesh (hereinafter referred to as the 'deceased'), on the ground that they are wife and son of deceased. It was pleaded that the marriage of plaintiff No.1 was solemnized on 01.12.2000 and plaintiff No.2 is the only son of deceased and

plaintiff No.1. The said Kantesh died on 25.05.2021. Therefore, plaintiffs/petitioners filed petition for seeking succession certificate to claim the estate of the deceased. Later, it was converted into O.S.No.247/2022, since the respondent No.3/Insurance Company has intended to contest the petition, therefore, the said petition came to be contested. Hence, it was converted as suit.

4. During pendency of petition before the Trial Court, the appellant filed I.A.No.V under Order I Rule 10(2) R/w Section 151 of the CPC, praying to implead her as plaintiff No.3. The deceased Kantesh, during his life time, has purchased Insurance Policy by making the appellant as a nominee. Therefore, the appellant by contending being a nominee is legally eligible to receive the policy amount. Therefore, filed an application for impleadment. The said application was rejected by the Trial Court. Thereafter, considering the evidence on record, the Trial Court has decreed O.S.No.247/2022 by decreeing suit filed under Section 372 of the Act and granted issuance of succession certificate in favour of respondent Nos.1 and 2.

5. The appellant, who was unsuccessful in getting impleading herself in the suit, has preferred the present appeal challenging the said order of grant of succession certificate in favour of respondent Nos.1 and 2. This Court has allowed the application in I.A.No.2/2025 seeking permission to prosecute the appeal.

6. Learned counsel for the appellant submitted that the appellant is a nominee made by deceased while purchasing insurance policy with respondent No.3. Therefore, the appellant is legally and lawfully eligible to receive the said policy amount, but not by respondent Nos.1 and 2. He places reliance on Section 39(7)(8) of the Insurance Act, 1938. Therefore, submitted that since the appellant is the only nominee in the policy as nominated by deceased, therefore, the appellant alone is entitled to receive amount of the insurance policy. Hence, submitted that if succession certificate is granted as per order of the Trial Court, then it would be difficult for the appellant for receiving amount under policy. Hence, prays to allow the appeal and set aside the order passed by the Trial Court.

7. The appellant was a nominee, when deceased purchased insurance policy from respondent No.3. Just because

the deceased has made the appellant as nominee, that does not defeat law of succession, when other legal heirs are having right to claim estate of deceased. The purpose of making nomination is to discharge the initial burden of the banker/insurance institution to pay the amount to the nominee without keeping themselves. But, just because nominee is made that does not create any disentitlement by other legal heirs as per their right vested under the law of succession.

8. In this regard, Hon'ble Supreme Court in the case of ***Smt. Sarabati Devi and Another V/s Smt. Usha Devi 1984, 1 SCC 424*** has laid down principle of law by interpreting Section 13 of the incidence Act at paragraph Nos.5, 8 and 10.

> ***5.*** *We shall now proceed to analyse the provisions of Section 39 of the Act. The said section provides that a holder of a policy of life insurance on his own life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. If the nominee is a minor, the policy-holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy-holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or*

changed, but before such cancellation or change is notified to the insurer if he makes the payment bona fide to the nominee already registered with him, the insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is 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' in paragraph 16 of the decision of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of Section 39

which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where wills are registered.

8. *We have carefully gone through the judgment of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(kb) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee as being equivalent to an heir or*

legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in Karuppa Gounder v. Palaniammal [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] ***and in B.M. Mundkur v. Life Insurance Corporation of India [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad*** *336] . The relevant part of the decision of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11)*

10.In Karuppa Gounder v. Palaniamma [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] , K had nominated his wife in the insurance policy. K died. It was held that in virtue of the nomination, the mother of K was not entitled to any portion of the insurance amount.

11. I am in respectful agreement with these views, because they accord with the law and reason. They are supported by Section 44(2) of the Act. It provides that the commission payable to an insurance agent shall after his death, continue to be payable to his heirs, but if the agent had nominated any person the commission shall be paid to the person so nominated. It cannot be contended that the

nominee under Section 44 will receive the money not as owner but as an agent on behalf of someone else, vide B.M. Mundkur v. Life Insurance Corporation [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . Thus, the nominee excludes the legal heirs.

10. *It is obvious from the above passage that the above case has no bearing on the meaning of Section 39 of the Act. The fact of nomination was treated in that case as a piece of evidence in support of the finding that the policy was not a joint family asset but the separate property of the coparcener concerned. No right based on the ground that one party was entitled to succeed to the estate of the deceased in preference to the other or along with the other under the provisions of the Hindu Succession Act was asserted in that case. The next error committed by the Delhi High Court is in drawing an analogy between Section 39 and Section 44(2) of the Act thinking that the Madras High Court had done so in B.M. Mundkur case [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . In B.M. Mundkur case [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] the High Court of Madras instead of drawing an analogy between Section 39 and Section 44(2) of the Act actually contrasts them as can be seen from the following passage:*

". . .There are vital differences between the nomination contemplated under Section 39 of the Act and nomination contemplated under the proviso to Section 44(2) of the Act. In the first place, the sum assured, with which alone Section 39 was concerned, was to be paid in the event of the death of the assured under the terms of the contract entered into between the insurer and the assured and consequently it was the contractual right which remained

vested in the insured with reference to which the nomination happened to be made. It should be pointed out that the nomination as well as the liability on the part of the insurer to pay the sum assured become effective simultaneously, namely, at the moment of the death of the assured. So long as he was alive, the money was not payable to him, in the case of a whole life policy, and equally, having regard to the language of Section 39(1) of the Act, the nominee's right to receive the money arose only on the death of the assured. Section 39 itself did not deal with the title to the money assured, which was to be paid by the insurer to the nominee who was bound to give discharge to the insurer. It was in this context that the Court took the view that the title remained with the estate of the deceased and, therefore, with the heirs of the deceased, that the nomination did not in any way affect the title and that it merely clothed the nominee with the right to receive the amount from the insurer. (AIR 1977 Mad 77, para 10-A)

11. On the other hand, the provisions and purport of Section 44 of the Act are different. In the first place, under Section 44(1) it was a statutory right conferred on the agent to receive the commission on the renewal premium, notwithstanding the termination of the agreement between the agent and the insurer, which provided for the payment of such commission on the renewal premium. The statute also prescribed the qualification which rendered the agent eligible to receive commission on such renewal premium. Section 44(1) provides for the payment of the commission to the agent during his lifetime only and does not contemplate the contingency of his death and the commission being paid to anybody even after his death. It is Section 44(2) which deals with the payment of commission to the heirs of deceased for so long

as such commission would have been payable had such insurance agent been alive. Thus it was not the general law of inheritance which conferred title on the heirs of the deceased insurance agent to receive the commission on the renewal premium, but it was only the particular statutory provision, namely, Section 44(2) which conferred the right on the heirs of the deceased agent to receive the commission on the renewal premium. In other words, the right of the heirs to receive the commission on renewal premium does not arise under any law of succession and it is a right directly conferred on the heirs by Section 44(2) of the Act, even though who the heirs of the deceased insurance agent are will have to be ascertained under the law of succession applicable to him. Thus the statute which conferred such a right on the heirs is certainly competent to provide for an exception in certain cases and take away such a right from the heirs; and the proviso which has been introduced by the Government of India Notification 1962 has done exactly this in taking away the right of the heirs conferred under the main part of Section 44(2), in the event of the agent, during his lifetime, making a nomination in favour of a particular person and not cancelling or altering that nomination subsequently. If the statute itself was competent to confer such a right for the first time on the heirs of the deceased agent, it is indisputable that the statute could take away that right under stated circumstances. . . .” (AIR 1977 Mad 77, para 11)

9. Therefore, just because of facility of nomination is made that does not defeat the rights of the legal heirs to claim their right in respect of estate of deceased, as the right of the other legal heirs is as per law of succession. Just because,

nomination is made during lifetime of deceased, that does not amount to divesting of title after death of deceased. After death of deceased, whatever the estate/amount is there, it is devolved to the legal heirs of deceased as per governing law of inheritance. Therefore, there is no merit in the contention taken by the appellant that just because the appellant is made as nominee than, she alone is entitled to receive the entire amount depriving the right of other legal heirs. Therefore, the appeal is liable to be dismissed having no merits to consider the case. Therefore, the appeal is dismissed.

10. However, liberty is reserved to the appellant to make claim as per law of succession/law of inheritance as per law.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

PMP-Para 1 to 7
RKM-Para 8 to end
ct-cmu
LIST NO.: 1 SL NO.: 10