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Present: Porter J. and Jayewardene A.J.

LETCHCHIMIPILLAI *v.* SIVAKOLUNTU.

114—D. C. Batticaloa, 35.

Mutual provident or benefit association—Member naming a relative as nominee—Nominee entitled to money, and does not receive money as trustee for heirs.

Where a relative was named as a nominee by a member of the Ceylon Mutual Provident Association,—

Held, that under rule 22 the nominee became entitled to the money payable by the society on the death of the member, and that he did not hold it as trustee or agent for the heirs of the member.

The Ceylon Mutual Provident Association v. Mendis[1] not followed.

THE facts are set out in the judgment.

Balasingham, for the administratrix, appellant.—The administratrix was named as the nominee by the deceased, Kandiah, who was a member of the Mutual Provident Association. He is in the position of a person for whose benefit a policy of insurance has been effected. The rules of the association indicate that such was the intention.

The District Judge has relied on *ratio decidendi* in *The Ceylon Mutual Provident Association v. Mendis* (*supra*). In a later case, *76—D. C. (Inty.) Jaffna, 5,050 (S. C. Min., July 24, 1923)*, Jayewardene A.J. doubted the correctness of that decision. Counsel cited *Ashby v. Costin*,[2] *Bennett v. Slater*.[3]

No appearance for respondent.

Cur. adv. vult.

October 2, 1923. JAYEWARDENE A.J.—

This appeal raises a question with regard to the rights of a nominee of a member of a mutual provident or benefit association. One Kandiah was a member of the Ceylon Mutual Provident Association. He was unmarried. Under the rules of the association he named as his nominee a relative—his aunt and stepmother—who is the present appellant. Kandiah died intestate, and letters of administration have been issued to the appellant. At a judicial settlement of the accounts of the estate she claimed to retain a sum of Rs. 2,153·77, payable by the association to the nominee of Kandiah. Her claim was contested by the other heirs of Kandiah, who assert that the sum formed part of the estate of the deceased,

[1] *(1922) 24 N. L. R. 205.* [2] *(1888) 21 Q. B. D. 401.*
[3] *(1899) 1 Q. B. D. 45.*

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and that it ought to be distributed among all the heirs. The learned District Judge, relying on a recent judgment of this Court in *The Ceylon Mutual Provident Association v. Mendis* (*supra*), upheld the contention of the heirs, who are the respondents to this appeal. Recently, in a case which came before this Court, where this question was discussed, I had occasion to remark that that decision would have to be considered in the light of certain English decisions, to which I drew the attention of counsel. Relying on these decisions, to which I shall refer presently, Mr. Balasingham contends that the decision in the above case is erroneous. The Ceylon Mutual Provident Association is, I presume, not a society registered under the Societies Ordinance, No. 16 of 1891, therefore the rights of the members *inter se* depend entirely on contract, and when a member joins, he enters into a contract with the other members of the society, who are represented by their agent—the secretary or committee—authorized to admit him. In this way the members mutually contract with each other to make provision for their widows, children, and others on certain prescribed terms. These terms are embodied in rules, and each member as he joins agrees to be subject to and to abide by the rules of the society. Now, the rules of the Ceylon Mutual Provident Association dealing with nominations and nominees are the seventeenth and twenty-second, which are as follows :—

"17. That the nominee or nominees of a member shall be a member or members of his family, including a *bona fide* adopted child where a member has no child or children of his own ; or, failing such, any other relation. Such name or names shall be registered in the books of the association as well as in the member's pass book ; provided that on the marriage of a member the nomination previously made by him shall cease to be valid, and that a fresh nomination shall be made by such member, which shall be duly registered."

"22. On the death of a member, the amount available to his credit in the books of the association shall be paid to his nominee upon application . . . . In the absence of a nominee, the credit balance and contributory call shall be paid to the widow ; if there be no widow, to the children ; and if there be no children, to the next of kin or legal heirs. Provided, that if the nominee be a minor, the amount due to such minor shall be deposited in the Ceylon Savings Bank for the benefit of the minor, and be subject to the rules of the said bank in respect of deposits made for the benefit of minors."

The question for decision is whether the nominee receives the money beneficially, or as the trustee or agents of the heirs. In *The*

Ceylon Mutual Provident Association v. Mendis (*supra*) this Court took the view, that as the rules did not say that the money should become the property of the nominee, the nominee did not become the owner of the money, and that the rules merely designated the destination of the property, and appointed a person who could give a valid discharge to the association. In that case the facts upon which the dispute arose were not quite simple, and it did not involve a claim by a nominee. The contest there arose in this way. One Solomon Pieris was a member of the same provident association as the deceased here, namely, the Ceylon Mutual Provident Association, and under the rules he had nominated his cousin, Daniel Pieris, as his nominee. Daniel Pieris, however, predeceased Solomon Pieris, who died later leaving a will by which he bequeathed this specific sum to the added defendant in the case. He left no widow and no children. The first and second defendants were his executors, while the other defendants were his next of kin or legal heirs. The Ceylon Mutual Provident Association filed an interpleader action, citing the various claimants before the Court. According to the rules, where there is no nominee, this money has to be paid to the widow, if there be no widow then to the children, and if there be no children to the next of kin, or legal heir, but the District Judge held that the devisee under the will was entitled to the money. This Court upheld his decision.

It will be seen that the case did not deal with the claim of a nominee, but the reasons given in the judgment apply equally to the case of a nominee if placed in the same position as the legal heirs in that case. This appears from the judgment of Ennis J., who said :—

> " . . . . there is no legal principle upon which a nominee mentioned in the rules (or, in the absence of the nominee, the person specified in the rules) becomes the owner of the amount paid to him or her. The effect of the rules, as at present formulated, is to provide that the association shall be in a position to obtain a good receipt for any payments they make. The rules merely say that the money shall be paid to a nominee, a certain specified person, and do not say that the money should become the property of that person, and I know of nothing by which the payment under the rules would affect the devolution of ownership according to the principles of law. It is possible that if the rules had added that the property should pass to the nominee or the person specified, it might have been suggested that the devolution was based upon the contract between each individual member and the other members of the association. However, the rules contain no such words, and the words of the rule merely designate the destination of the property."

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According to this view the nominee is a mere agent or trustee, who receives the money without having any beneficial interest in it. But this view it seems to me is in conflict with the view held in England with regard to the rights of a nominee. There it has been held that a nominee takes the money beneficially and becomes the owner of it. It was so decided in *Ashby v. Costin* (*supra*). There the deceased had become a member of an unregistered frindly society which contained a rule which empowered the committee, on the death of a member, to pay an allowance called the death allowance—

> " To such person or persons as in their discretion they may think fit ; it being always understood that the extent to which the committee shall be bound to the payment of death allowances shall be, in the case of a married man, to his widow or children, or to his parents, or to any of them in such proportions as the committee shall determine ; and in the case of a single man, to his parents, brothers, or sisters, or any of them, in such proportions as aforesaid, unless the deceased members, married or single, have otherwise bequeathed the money, in which case it shall be paid to the person to whom it has been so bequeathed ; but should there be no such surviving relatives, nor any such special bequest, then the funeral expenses only, to a reasonable amount, shall be defrayed by the society."

The committee paid the death allowance to the deceased's sister, and the plaintiff, as administrator, sued her to recover the money. It was held that the above rule constituted the contract between the deceased and the society as to the payment of the money ; that the death allowance was not the property of the deceased ; and in the absence of a bequest by will was not assets for the payment of his debts, and that therefore the plaintiff could not recover. In the course of their judgment the judges (Cave and Grantham JJ.) said :—

> " As we read this rule, it forms the contract between the member and the society as to the payment of the death allowance, and by it the society binds itself to pay the death allowance to the person to whom the member may have bequeathed the same, and in the absence of any bequest, in the case of a married man, to his widow or children, or to his parents, or to any of them, in such proportions as the committee shall determine, or, in the case of a single man, to his parents, brothers, or sisters, or any of them in such proportions as aforesaid. In the absence of any such surviving relatives, the society are to pay only the member's funeral expenses. In Ashby's case the death allowance amounted to £80. He had not bequeathed it, and was

a single man, and under these circumstances the society paid the amount to the defendants' sister. It cannot be contended that the society have not fulfilled their obligation to the deceased, but it is said that the sum was assets for the payment of the debts of the deceased, and that the defendant in receiving it acted as executrix *de son tort* and is liable to the administrator. We cannot agree with that contention. The money was not the money of the deceased, although it was payable out of a fund to which he and others contributed. It was to be paid according to the bargain made by the deceased with the other members . . . . and by the contract between the society and himself the money was to be paid to certain prescribed relatives in such proportion as the committee of the society should determine. It was contended that the language of rule 27 was only intended to provide some one who should be able to give the society a good discharge for the money, but we cannot so read it . . . . . It must be remembered that the death allowance is not the property of the member in the sense of its belonging to him absolutely in his lifetime ; he has no right to it but such as the rules give him."

This decision was cited with approval in the case of *Bennett v. Slater* (*supra*), which was decided by the Court of Appeal. There the deceased was a member of a friendly society registered under the Friendly Society Act, 1875 (38 and 39 Vict., c. 60), and section 15, sub-sections (3) and (4) of that Act, with which section 9 (4) and (5) of the local Societies Ordinance, 1891, is almost identical, gives a member the right to nominate a person to whom his interest in the society is payable, and also designates the persons to whom such interest is to pass on failure of a nominee. The deceased left a will appointing the defendants as executors, and bequeathing his residuary estate to his grandchildren. The plaintiff, as nominee, claimed the money payable by the society, and her claim was upheld, as the nomination was not revoked by the subsequent will. A. L. Smith L.J. said :—

"The second contention for the defendant was that the nomination was revoked by the will. With regard to that contention, 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 ; and therefore I find a difficulty in seeing how under a residuary bequest this money can be considered as included."

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And Rigby L.J. said :—

"The next question is whether there has been a revocation of the nomination. I think that the intention of the Legislature was to enable members of friendly societies to make by means of a nomination under the Act a gift of moneys insured by them with the society, although, no doubt, such a gift was not to be irrevocable, but might be revoked in the manner prescribed by the sub-section. It appears to me, that being so, that money, the subject of such a nomination which has not been revoked, forms no part of the residuary estate of the testator. The case of *Ashby v. Costin* (*supra*), which was cited to us, is as nearly as possible an authority for that proposition, for there it was held that under the rules of the society the money insured was not an asset of the member, but was made, by virtue of the bargain between the society and its members contained in the rules, the property of the person prescribed by the rules, as it is here, in my opinion, made the property of the nominee by the operation of the sub-section. In this case, if the nominator had revoked the nomination in the manner prescribed by the Act, the money would have formed part of the estate, but he did not do so, and therefore, in my opinion, it was no part of his estate."

These two judgments, in my opinion, clearly lay down that a nominee appointed under the rules of a mutual benefit association, whether registered or unregistered, is interested in, and entitled to, money payable by the society beneficially, and not as a mere trustee or agent for the heirs. Also see *In re W. Philips' Insurance*.[1] According to the judgment in the local case, the nominee (or, in the absence of a nominee, the person specified in the rules) is designated merely to enable the association to obtain a good receipt for any payments they may make. The same ground appears to have been put forward in *Ashby v. Costin* (*supra*), but it was not accepted by the Court. Another reason given in the local case is that the rules do not say that the money should become the property of the nominee or other specified person, but neither section 15 (3) and (4) of the English Act of 1875 nor section 9 (4) and (5) of the local Ordinance of 1891 says that the money should become the property of the nominee. They merely say that the society shall pay to the nominee the amount due to the deceased member. Still, it was held in *Bennett v. Slater* (*supra*) that the nominee was beneficially interested in the money, and it formed no part of the deceased's estate. The money becomes the property of the nominee, or the person specified in the case of unregistered societies "by virtue of the bargain between the society and its members contained in the rules," and in the case of registered societies by operation of law. There is

[1] (*1882*) *23 Ch. D. 235.*

nothing in the rules of the Ceylon Mutual Provident Association to prevent the application of the principle laid down in the two English cases I have referred to. Rules 17 and 22 of the Ceylon Mutual Provident Association practically embody the rule as contained in the English Act and the local Ordinance. These decisions of the English Court of Appeal are, in my opinion, binding on this Court according to the principle laid down in *Trimble v. Hill* [1] and followed in *Meedin v. Banda.*[2]

I may, however, here refer to another case, *In re Read, Read v. Turner*,[3] in which it was held by Sterling J. that an executor who had been made a nominee under the Savings Bank Act, 1887 (50 and 51 Vict., c. 40), received the money in deposit, not as a gift, but as executor. Under this Act the Postmaster-General was authorized to make rules for the nomination by a depositor of any person to whom any sum, not exceeding £100, payable to such depositor at his decease was to be paid at such decease, and in this case the depositor nominated her executor as her nominee, and it appeared from the evidence that the testator had in conversation, in the presence of the nominee, referred to the Savings Bank money as available for the payment of her debts, and had expressed a wish that the executor should receive something for his trouble, and had given him her watch. Upon these facts the learned Judge said :—

> " I come to the conclusion that the intention of the testatrix was by executing the nomination form to transfer the money standing to her credit at the Post Office at her decease to the nominee as executor . . . . "

There the facts were so entirely different from the facts here and in the two English cases already referred to. The Post Office Savings Bank is not a benefit society, and any persons without restriction may be nominated, and the nomination is treated as a mode of transferring the money. The fact of the transferee being executor, and the expression of the depositor's desire that the money should be used for paying her debts, were held to make the nominee a trustee. *Ashby v. Costin* (*supra*) and *Bennett v. Slater* (*supra*) were not referred to, and this case cannot be regarded in any way as affecting the judgments in those two cases.

The rules of the Ceylon Mutual Provident Association themselves, when closely examined, show that they were intended to confer on the nominee, or, failing him, the persons specified, something more than a mere temporary interest. Why is it declared that on the marriage of a member the nomination previously made by him shall cease to be valid and that a fresh nomination shall be made ? Then if there be no nominee, why is it required that the money should be paid to (1) his widow, or (2) his children, or (3) his next of kin or legal heirs ? Why should the right to be a nominee be restricted to the members of the family, or, failing these, to relations ? Our

[1] *(1879) L. R. 5 A. C. 342.* [2] *(1895) 1 N. L. R. 51.* [3] *(1896) 75 L. T. 295.*

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of the objects is stated to be to make some provision for widows and orphans. How is this to be done, if the money is to be handed over to an executor or administrator to be dissipated in paying off creditors ? What is the meaning of the rule which required that in the case of a nominee who is a minor the money shall be deposited in the Savings Bank for his benefit, if the minor nominee is not regarded as the owner of the money ?

All these provisions, in my opinion strongly indicate that it is intended to confer on the nominee, failing him, the persons specified, a proprietary right in the money, which, or a part of which, might be used by his relatives for the purposes of the deceased, such as his funeral, &c. Membership of a friendly society or mutual provident association is a form of life insurance or assurance, and a life insurance policy may be kept up for the benefit of a nominee, and the nominee in such cases is called the donee. See section 8 (1) of the Estate Duty Ordinance, No. 8 of 1919, where in enumerating property passing on the death of the deceased it includes—

(*f*) "Money received under a policy of assurance effected by the deceased on his life where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by the deceased for such benefit."

The judgments in the English cases ought, in my opinion, to be considered as laying down the more correct principle, if I may say so with all deference to the Judges who decided *The Ceylon Mutual Provident Association v. Mendis* (*supra*), and it is more in keeping with the aims and objects of those forming these benefit societies. It may be that the judgment in that case is justified by its particular facts, for the nominee had died and the amount due from the association had been specifically bequeathed by will to the successful party, but a serious question arises as to whether, in the absence of a nominee, a member has the right to alter the order of devolution or succession laid down in the rules. The effect of the English decisions seems to deny him any right to depart from the terms of the contract he has entered into with the association, one of the terms being that the money standing in his name should, in the absence of a nominee, devolve in a particular order of succession. In the present case the nominee is still alive, and these difficult questions do not arise. The nominee is, in my opinion, entitled to the money as owner thereof, and the heirs of the deceased can claim no interest in it.

I would, therefore, set aside the order in appeal No. 114, and the appellant will be entitled to her costs in both courts. The cross appeal No. 114A has already been dismissed.

PORTER J.—I agree.

Set aside.