Received on : 27.11.2021.
Registered on : 08.12.2021.
Decided on : 08.02.2022.
Duration : -Y,2M,12Ds

<u>IN THE COURT OF DISTRICT JUDGE, SATARA. AT : SATARA</u>
(Presided over by B.S.Wavre, District Judge–3, Satara)

<u>MISC. CIVIL APPEAL NO.146 OF 2021.</u>
(CNR No.MHST01-02445-2021)
Exh.No. 16.

1.	**Mrs. Nilam Shashikant Yadav,** Age-54 Yrs, Occ-Housewife,	} } }
2.	**Shashikant Vishwas Yadav,** Age-64 Yrs, Occ-Housewife,	} } }
	Both R/o Solashi, Tal.Koregaon, Dist.Satara.	} **<u>APPELLANTS</u>** }(Ori.Opp.No.2 & 3)

<u>Versus</u>

1.	**Sonali Mahesh Yadav @** Sonali Bajirao Shinde, Age 28 Yrs, Occu. Housewife,	} } } }
2.	**Kum. Shardul Mahesh Yadav,** Age 9 Months, Occu. Nil, Through Guardian Resp.No.1. Both R/o S.No. 8/1/2, Flat No.G-1, Anusaya Residency, Karanje Tarf Satara, Tamjainagar, Tal.& Dist.Satara.	} } } } } } }
3.	**ICICI Prudential Life Insurance Co. Ltd.,** Through Authorized Signatory, ICICI Prolife Towers, 1089, Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400 025.	} }**<u>RESPONDENTS</u>** }(ori. Appl.1 & 2 }& ori.Opp.no.3) }

APPEARANCE **:**
Advocate Mr. K.C. Kharade for appellants.
Advocate Mr. V.B. Shinde for respondent No.1 & 2.
Advocate Mr. Sachin Daga for respondent No.3.

JUDGMENT
(Delivered on 8th February, 2022)

By this appeal opponents have challenged the order passed below application Exh.6 in Misc. Civil Application (Succession Application) No. 93/2021 dated 11.11.2021 by Jt. Civil Judge Sr.Dn., Satara.

02. Parties are hereinafter referred as per their status in plaint.

03. **Facts of the case are as under** :

Applicant No.1 has filed application for herself and minor applicant No.2 for getting succession certificate in respect of Insurance policy of her late husband with ICICI Prudential Life Insurance bearing Policy No. 72885362 by which sum assured is of Rs. 50 Lakhs. It is stated that applicant No.1 is wife of late Mahesh Shashikant Yadav, applicant No. 2 is their son, opponent No.1 & 2 are mother and father of late Mahesh Yadav and opponent No.3 is Insurance company. Late Mahesh Yadav got insured with opponent No.3 on 04.06.2020, unfortunately he died on 22.04.2021. After death of Mahesh Shashikant Yadav, applicants and opponent No.1 are Class-1 heirs and opponent No.2 is recorded as nominee for the policy amount, by taking disadvantage opponent No.2 intends to grab the amount, therefore applicant no.1 sent letter to opponent

No.3, said notice is replied by opponent No.3 and despite correspondence they told to get stay order from Court, hence the application.

04. Opponent No. 1 and 2 have opposed the application stating that deceased was only earning member in family and he was looking after opponent No.1 and 2. According to these opponents, they have provided some amount to deceased for purchasing flat and deceased had also taken house loan in the name of opponent No.1 and 2 for construction of house in village, Rs. 6,41,010/- are yet to be repaid. It is further stated that deceased Mahesh was having another Insurance policy of Rs. 40 Lakhs to which applicant no.1 was nominee, said amount is received by applicant No.1 and she had also received amount of insurance Rs. 29 Lakhs, thus applicant No.1 has received Rs. 69 Lakhs from the insurance policies to which she was recorded as nominee.

05. Opponent No.3 came with the case that opponent No.2 is the nominee and there is no change request from the deceased and Company will follow the order passed by the Court.

06. **Grounds in appeal** :

Opponent No.1 and 2 raised the grounds that impugned order is against the principles of justice, equity and good conscience, learned Trial Court has not considered the provisions of Insurance Act 1955, the findings recorded are incorrect, it is not considered that opponent No.2 is nominee and as per existing provisions of Insurance Law he is entitled to receive the policy amount.

07. Following points arise for determination. I have recorded findings thereon for the reasons stated below.

	POINTS	**FINDINGS**
1	Whether impugned order requires interference ?	In the negative.
2	What order ?	As per final order.

REASONS

AS TO POINT NO.1 :

08. Heard Advocate for parties.

09. Advocate for opponent No.1 and 2 pointed out provision under Section 39 of Insurance Act 1938, it is submitted on behalf of opponent No.1 and 2 that after amendment in Insurance Act in 2015 nominee shall be entitled to get the benefits of the policy.

10. Sub-Section 7 of Section 39 provides that,

> "(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred and such beneficial title on the nominee."

11. Thus the proviso to sub-section (7) clearly says that it can be proved that holder of the policy could not have conferred

beneficial title on the nominee and said fact can be proved after trial only. If opponents are allowed to withdraw the amount being nominee the suit will become infructuous and there will be no opportunity for the applicant to prove the fact as per the proviso to sub-section 7 of Section 39 of Insurance Act. Hence I come to conclusion that opponent No.2 and 3 may be restrained from withdrawing and disbursing the amount of insurance policy of deceased Mahesh Shashikant Yadav till disposal of application, thus no interference required in impugned order. I answer the point accordingly. In result, appeal is liable to be dismissed. I pass following order :

ORDER

01. Appeal stands dismissed with costs.

02. The order passed below application Exh.6 in Misc. Civil Application No. 93/2021 dated 11.11.2021 by Jt. Civil Judge, Sr. Dn., Satara is confirmed.

03. Decree be drawn accordingly.

Digitally signed by BALASAHEB SHIVAJI WAVRE
Date: 2022.02.09 12:16:06 +0530

Satara. **(B.S.Wavre)**
Date : 08.02.2022. **District Judge–3, Satara.**