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is thus needless to consider whether *Gonesh Das* v. *Shiva Lakshman* (1) has been affected by section 73 of the Code of 1908 which reproduces section 295 of the Code of 1882 in an altered form. In this view, it is also unnecessary to discuss the question, whether the application for rateable distribution by the petitioners was made before the assets had been received by the Court below.

The result is that the Rule is discharged with costs to the decree-holder (and not to the judgment-debtor) opposite party.

G. S. *Rule discharged.*

(1) (1903) I. L. R. 30 Calc. 583.

APPELLATE CIVIL.

Before Woodroffe and Carnduff JJ.

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April 8.

ANNAPURNA DASEE

v.

NALINI MOHAN DAS.*

Succession Certificate—Succession Certificate Act (VII of 1889), s. 4.—"Debt," meaning of—Part of debt, if certificate can be granted in respect of—Appeal.

A certificate under the Succession Certificate Act can be granted in respect of a part only of a debt due to the deceased.

The word "debt" is a comprehensive term, which should receive a liberal construction.

Re Ghansham Das (1), and *Mahomed Abdul Hossain* v. *Sarifan* (2), approved and followed.

Akbar Khan v. *Bilkisara Begam* (3), considered.

*Appeal from Order No. 328 of 1913, from the order of M. Smither, District Judge of Dacca, dated June 23, 1913.

(1) (1893) All. W. N. 84. (2) (1911) 16 C. W. N. 231.

(3) (1901) All. W. N. 125.

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Bibee Boodhun v. *Jan Khan* (1), *Muhammed Ali Khan* v. *Pattan Bibi* (2), *Bismilla Begam* v. *Tawassul Husain* (3) and *Ghafur Khan* v. *Kalandari Begam* (4) not followed.

APPEAL by Annapurna Dasee from an order of the District Judge of Dacca dismissing the petition of the appellant for a certificate under the Succession Certificate Act empowering her to receive the interest on certain Government promissory notes and the dividends on certain Bank of Bengal shares.

The appellant was the widow and heiress of one Sanatan Das, who died on February 24th, 1902. Part of the estate of the deceased consisted of certain Government promissory notes and Bank of Bengal shares, and upon these there was due, by way of interest and dividends at the date of the death of the deceased, a sum of Rs. 4,963-10-4. On April 25th, 1913, the appellant presented a petition for a succession certificate in respect of this sum without asking either for payment of interest and dividends accruing between the date of the deceased's death and the date of the petition or that the promissory notes and shares should be made over to her. The District Judge dismissed the petition. Hence this appeal.

Mr. S. P. Sinha, *Dr. Rash Behary Ghose*, and *Babu Upendra Lal Roy*, for the appellant.

Mr. B. Chakravarti, *Mr. B. C. Mitter*, *Babu Bepin Chandra Mullick* and *Babu Suresh Chandra Das*, for the respondents.

Cur. adv. ault.

WOODROFFE J. This appeal arises in connection with an application which has been made for a succession certificate.

(1) (1870) 13 W. R. 265.
(2) (1896) I. L. R. 19 All. 129.
(3) (1910) I. L. R. 32 All. 335.
(4) (1910) I. L. R. 33 All. 327.

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The deceased Sanatan Das died leaving Government promissory notes and Bank of Bengal shares on which Rs. 4,000 odd were due for interest at the time of his death, and since his death over Rs. 75,000 as further interest have fallen due. The application is by his widow for a certificate which will enable her to realise interest and dividends due up to the date of her husband's death but not the interest and dividends falling due after his death, or the principal. The object of the application apparently is that the applicant may thereby be exempted from finding a large security which she would have to find if a certificate were applied for in order to recover the principal, interest and dividends accruing both before and after the death of her husband.

The learned Judge was of opinion that the certificate, as asked for could not be granted. He says: "The law intends that in fit cases security should be taken to protect such claims. The present peculiar limitation is intended to evade the giving of any such security. I am not prepared to make the limited grant prayed for. In the absence of any valid objection by the objector, whom I have not yet heard, I am prepared to make a grant in the ordinary way of power to realise dividends and interest, not limited to a particular date, but generally such as fall due on proper security being given. I find nothing to indicate that it was intended that power should be given to realise dividends for a very short period only, the provisions are for granting power to realise dividends: and practically apart from the question of law there is no good reason for so limiting a grant. I decline to make the limited grant prayed for in all the circumstances. Subject to what I may hear from the other side, I will make a grant in the ordinary way on proper security being given, and not one to enable the applicant to

draw Rs. 4,000 odd with security and Rs. 75,000 odd at present and more in the future without security."

A preliminary objection has been taken by the respondent that no appeal lies on the ground that the order which I have just read was not a final order from which an appeal would lie. In my opinion, however, there is no force in this contention. There was a final order namely, that portion of the order in which the Judge says that he declines to make the grant prayed for. It is true that he went further and said that he would be prepared to make another grant different from that which he had refused, but that was an expression of opinion as to what he was prepared to do under different circumstances and did not affect the finality of the order which was passed. He refused to grant the application prayed for merely adding as a rider, which in effect was unnecessary that if another application was made in a different form he would consider it. In my opinion, therefore, the preliminary objection fails and an appeal lies. The question we have to consider is as to the merits of this application. There is a ground which has been taken in appeal that the learned District Judge should have held that Act VII of 1889 had no application to the interest and dividends falling due after the death of the appellant's husband, it being contended in such grounds that such interest and dividends were a debt not due to the deceased but due to his widow, the present applicant, and that therefore the petitioner was not bound to include the interest and dividends in the present application. On the other hand, it has been contended that the principal sum was a debt due to the deceased even though it may have been payable after his death and that the rule governing the grant of a certificate to recover such principal applies not only in respect of the interest earned by

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such principal before the death of the deceased but also after his death. It is, however, unnecessary in the present case to consider this point because I think that the appeal may be dealt with upon the other grounds to which I am now about to refer.

The question which we have to decide is whether a certificate can be granted for the recovery of a part of a debt. It appears to be well established that a separate certificate may be granted in respect of separate debts and that there is nothing in law which compels the applicant for such a certificate to apply for a certificate in respect of all the debts due to the deceased. But the question which is now before us is this, whether assuming that to be so we can go further and hold that as regards a single debt, a certificate can or cannot be granted for the purpose of enabling the applicant to recover a portion of that debt. The word "debt" is a comprehensive term which I think should receive a liberal construction. The object of the Act is to protect the debtors of a deceased person but there is nothing in law which prevents a debtor from making payment of his debt without the production of a certificate if he so chooses. Now, the first point from which the matter may be looked at is that of authority, it being contended by both sides in this appeal that the Case law supports the respective contentions which they have placed before us and there are decisions which may be cited in support of either of these contentions.

The earliest decision to which we have been referred is *Mussamat Bibee Boodhun* v. *Jan Khan* (1). In that case Mussamat appealed against an order granting Jan Ali a certificate to collect five-sixths of the debts due to the estate of Zuhur Ali and the learned Judges say :" Now, we observe at the outset of the

(1) (1870) 13 W. R. 265.

case that this order is irregular. Act XXVII of 1860—that is the old Succession Certificate Act—does not contemplate a division of a certificate or a power to collect fractional shares of debts." This passage favours the respondent's contention and indeed goes the whole way which he desires us to go; but the statement there made was a mere expression of opinion. It does not appear to have been the subject of discussion or argument and was unnecessary seeing that the suit in which it was given was not heard but was compromised.

In the case of *Muhammad Ali Khan* v. *Puttan Bibi* (1), it was held by Sir John Edge C. J. and Burkitt, J. that a certificate for collection of debts under Act VII of 1889 may be given for the collection of any one or more separate debts of the deceased, but not for the collection of part only of a debt. The ground upon which the learned Judges appear to have based their decision was that a contrary view might lead to a multiplicity of suits and the harassment of debtors.

This case was followed by that of *Bismilla Begam* v. *Tawassul Husain* (2) in which it was held that no certificate could be granted to one of the heirs of a Mahomedan lady who had died leaving a dower debt unrealised for collection merely of a part of the dower debt of the deceased. It was also followed by the decision in *Ghafur Khan* v. *Kalandari Begam* (3), in which it was held that no certificate could be granted to one of the heirs of a Mahomedan lady, who had died leaving her dower debt unrealised, for collection merely of a part of the dower debt of the deceased. There again, the decision was based on the ground that a debtor is not to be harassed more than once for one debt and a multiplicity of

(1) (1896) I. L. R. 19 All. 129. (2) (1910) I. L. R. 32 All. 335.
(3) (1910) I. L. R. 33 All. 327.

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suits in respect of one cause of action should be discouraged and on the ground that the word "debt" must be taken to mean the whole of the debt due to the deceased and not a portion or share of such debt. It was considered that the latter view was opposed to the scheme of the Act which had been enacted to afford protection to debtors and had nothing to do with the convenience of the applicant or his right to, or share in the debt.

Previous, however, to this, there appears to have been a conflict even in the Allahabad High Court on this point; for, in the case of *Akbar Khan* v. *Bilkisara Begam* (1), Chamier J. doubted the correctness of the decision in *Muhammad Ali Khan* v. *Puttan Bibi* (2), and was of opinion, that the word "debts" in section 6 (*f*) of the Succession Certificate Act means debts due, *i.e.*, alleged to be due from debtors to the person applying for the certificate.

Further, *In re Ghansham Das* (3), Blair J. gave a decision which directly supports the contention of the appellant before us holding that there was nothing in the Succession Certificate Act of 1889 to preclude a Judge from granting a certificate for partial collection of the debts of a deceased person, security being furnished by the applicant of proportionate amount. He, therefore, says "there seems to be no practical objection to the issue of a certificate for partial collection inasmuch as the Act itself contemplates the addition to a certificate of debts to which it did not originally apply."

Further, the latest case, and it is one in our Court, supports the view which we have been asked to accept by the appellant. That case is *Mahomed Abdul Hossain* v. *Sarifan* (4), and was decided by

(1) (1901) All. W. N. 125.
(2) (1896) I. L. R. 19 All. 129.
(3) (1893) All. W. N. 84.
(4) (1911) 16 C. W. N. 231.

Mookerjee and Carnduff, JJ. There the Court dissented from the decision in *Ghafur Khan* v. *Kalandari Begam* (1) and held that section 4 of the Succession Certificate Act does not require that the certificate should cover the whole of the debt, if the heirs do not seek to realise the whole. This was a case in which one of several heirs of a deceased Mahomedan lady sued her husband for a portion of the share of the deferred dower due by the defendant to the deceased relinquishing the balance. It was held that in respect of the deferred dower, each of the heirs of the deceased had a distinct right enforceable by himself, though all might jointly sue and that it was open to each to relinquish a portion of the claim. It was also held that an application by the plaintiff for a succession certificate in respect of the amount claimed by her in the suit was properly granted. No doubt, the circumstances of that case were not exactly the same as those before us; but the principle upon which the decision proceeds seems applicable to the present circumstances; for the debt due to the deceased was one debt and yet it was held that a partial certificate might be granted to one of several of the heirs to recover the portion of that debt which he claimed. And if this may be done, I do not see in principle why a person may not, as in this case, apply for a certificate to enable him to recover a portion of a debt due to the deceased. The matter appears to be one which rather affects the question of revenue than anything else. But there does not appear to me to be, as Blair J. points out, any practical objection to the grant of such a certificate which may be, as in the present case, a distinct convenience to the applicant.

As regards the objection which has been taken that such a procedure may lead to a multiplicity of

(1) (1910) I. L. R. 33 All. 327.

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suits, the answer appears to me to be two-fold. In the first place, if the debt be due and the debtor be honest and solvent, he will pay on the production of the certificate, for the grantee of the certificate can give him a valid discharge to the extent indicated by the instrument. There will then be no necessity for a suit, and the question of multiplicity upon which the learned Judges of the Allahabad High Court proceed, will not arise at all. Nextly, if there is such a suit it by no means follows that, because a certificate may be given to recover a fractional share of a debt, the principle of law which prohibits multiplicity of suits, is in any way affected. We must distinguish between two separate things, one is the grant of a certificate and the other is the institution of the suit. We are not here concerned with the frame of a suit but whether a certificate should be granted, and it may well be that though a certificate may be granted to recover a fractional share of a debt, yet if the person to whom the certificate was granted were to sue for a portion of a debt which he might have sued for in a previous suit, his claim would be barred under the provisions of the Civil Procedure Code.

I am of opinion, therefore, that both on the ground of principle and of the authorities to which I have referred and which support the contention of the appellant, this appeal should succeed, I therefore would reverse the order of the District Judge rejecting the application for a certificate in the terms prayed for by the appellant, and remand the case to him for a rehearing.

The respondents will pay the appellant's costs of this appeal.

CARNDUFF J. I agree.

Appeal allowed; case remanded.

H. R. P.