

CIVIL REVISION.

Before Henderson J.

SHEETALCHANDRA DATTA

v.

LAKSHIMANEE DASEE*.

1935

Mar. 14, 22, 25.

Succession Certificate—Succession Certificate, if necessary in case of survivorship
—*Indian Succession Act (XXXIX of 1925), s. 214.*

Section 214 of the Indian Succession Act applies to the case of a person claiming on succession to be entitled to the goods of the deceased. It does not apply to a case where the claimant has obtained property not as an heir but by survivorship.

The addition of the words "on succession" in the new Act has a restrictive and not a widening effect and the old decisions are still apposite.

Mathura Prasad v. Durgawati (1) and *Sital Proshad Poddar v. Kaifut Sheikh* (2) followed.

Rajah of Kalahasti v. Achigadu (3) distinguished.

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The material facts appear from the judgment.

Chandrashekhara Sen for the petitioner. Under section 214 of the Indian Succession Act, the plaintiff is not entitled to a decree without a succession certificate. This particular debt is an actionable claim and obtained by succession and not by survivorship, which applies only to the assets of the last male owner. *Rajah of Kalahasti v. Achigadu* (3). The case of *Sital Proshad Poddar v. Kaifut Sheikh* (2) is not applicable. There has been a change in the section and the old decisions do not apply.

*Civil Revision, No. 1464 of 1934, against the order of Rajendralal Chakrabarti, Second Subordinate Judge of Howrah, dated Aug. 18, 1934.

(1) (1914) I. L. R. 36 All. 380.

(2) (1921) 26 C. W. N. 488.

(3) (1905) I. L. R. 30 Mad. 454.

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Narendranath Chaudhuri for the opposite party. The plaintiff inherited by survivorship. Succession certificate is not necessary. *Mathura Prasad v. Durgawati* (1).

Cur. adv. vult.

HENDERSON J. This is a Rule obtained by the defendants calling upon the plaintiff to show cause why a decree passed by the Small Cause Court Judge of Howrah should not be set aside or modified. The suit was instituted to recover rent due on account of premises situated at 66, Grand Trunk Road, Howrah, which are in the occupation of the petitioners.

The first point urged is that the plaintiff is not entitled to a decree for the full amount claimed without the production of a succession certificate. The property originally belonged to one Mahendranath Ghosh; on his death it passed to his widow and then, on her death, to his two daughters, the plaintiff and one Lakshimanee, who died shortly before the institution of the suit. It has been contended on behalf of the plaintiff that, inasmuch as she obtained the property not as an heir of Lakshimanee but by survivorship, no succession certificate is necessary.

Section 214 of the Indian Succession Act will apply if the plaintiff is a person claiming on succession to be entitled to the goods of the deceased. The two sisters were joint tenants and it would not have been open to Lakshimanee, during her life-time, to sue separately for any sum she might wish to claim as her share of the joint debt. On the other hand, the plaintiff has obtained the property, not as heir of Lakshimanee, but by survivorship. In these circumstances, it would be difficult to say that she claims on succession to be entitled to the effect of her deceased sister.

The question whether a succession certificate is necessary, when the plaintiff obtains the property by

survivorship, has been considered before and the authorities are against the contention raised in support of this Rule; as examples, I may refer to the cases of *Mathura Prasad v. Durgawati* (1), *Sital Prashad Poddar v. Kaifut Sheikh* (2) and *Sahadev Sukul v. Sakhawat Hossein* (3). Mr. Sen has, however, relied on the case of *Rajah of Kalahasti v. Achigadu* (4). That case was decided on its own peculiar facts. The property in question was an impartible *zemindâri* and it was held that the plaintiff could not recover rents due to his predecessor without producing a succession certificate. The *ratio decidendi* was that the plaintiff and his predecessor were not joint tenants. This case really, therefore, supports the plaintiff.

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The cases to which I have referred all relate to the old Act, in which the words "on succession" did not occur. But the addition of these words has a restrictive and not a widening effect and the old decisions are still apposite. The first point taken, therefore, fails.

The second ground urged is that the learned judge did not deal with the petitioners' plea of payment. It is said that the rent was discharged by the supply of cloth from the petitioners' shop. Now it was never the petitioners' case that, on the presentation of rent bills, instead of paying cash, they delivered cloth and received receipts in discharge of the debt: it merely amounts to this that cloth was supplied on credit at irregular intervals. The learned judge was, therefore, right when he held that this defence was not a plea of payment but a claim to a set-off.

Both grounds urged in support of the Rule fail. It must, therefore, be discharged with costs. I assess the hearing fee at two gold mohurs.

A. C. R. C.

Rule discharged.

(1) (1914) I. L. R. 36 All. 380.

(3) (1907) 12 C. W. N. 145.

(2) (1921) 26 C. W. N. 488.

(4) (1905) I. L. R. 30 Mad 454.