

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

KARUPPASAMI (PLAINTIFF), PETITIONER,

v.

PICHU AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1891.
September 9.
1892.
March 1.

Succession Certificate Act,—Act VII of 1889, ss. 4, 6—Suit by assignee of a debt due to a deceased creditor.

One Suppammal lent a sum of money to the defendant and died, leaving an adopted son, who assigned the debt to the plaintiff. Neither the plaintiff nor his assignor obtained a certificate under Act VII of 1889. The plaintiff now sued to recover the amount of the assigned debt:

Held, that the plaintiff was not entitled to recover, no certificate having been obtained under Act VII of 1889.

PETITION under Provincial Small Cause Courts Act of 1887, s. 25, praying the High Court to revise the proceedings of V. P. de Rozario, Subordinate Judge of Palghat, in small cause suit No. 879 of 1889.

The facts of this case appear sufficiently for the purpose of this report from the judgment of the High Court.

The Subordinate Judge dismissed the suit and the plaintiff preferred this petition.

Sankaran Nayar for petitioner.

Desikachariar for respondents.

JUDGMENT.—This is a petition presented under section 25 of Act IX of 1887. As plaintiff in small cause No. 879 of 1889 on the file of the Subordinate Court at Palghat, petitioner sued to recover from the first counter-petitioner money lent to the latter by one Suppammal since deceased. His case was that, after Suppammal's death, her adopted son, second counter-petitioner, assigned the debt to him, but it appeared that neither the assignee nor the assignor had obtained a certificate under Act VII of 1889. The Subordinate Judge called upon the petitioner to produce a certificate and granted him two months' time for doing so. Petitioner, however, failed to produce the certificate, and contended that, as the debtor had agreed to pay the debt to him, he was entitled

* Civil Revision Petition No. 229 of 1890.

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to recover it without producing a certificate. The Subordinate Judge disallowed the contention and dismissed the suit with costs. It is argued before us that Act VII of 1889 is applicable only to the representatives of deceased persons, and not applicable to their assigns. We think the decision of the Subordinate Judge is correct. It is not inconsistent with the language of section 4 of Act VII of 1889, for a person claiming a debt under an assignment made by the creditor's heir certainly claims part of the effects of such creditor. There is nothing in the section to show that the title derived from the heir is not as much within its purview as the right to succeed set up by the heir himself. It would further be unreasonable to hold that the assignee is in a better position than the assignor. If it were so held, the heir might assign the debts due to the deceased person to others and thereby evade the statutory duty imposed upon him by section 4. The intention was to afford protection to parties paying debts owing to deceased persons, and the construction suggested for the petitioner would frustrate that intention. The heir of a deceased person cannot by his own act deprive the debtors of the protection guaranteed to them by the Act. We may also observe that a certificate may be obtained under the Act in respect of particular debts due to a deceased person as contra-distinguished from probate or letters of administration, which create in representatives title to recover all the effects of such person. It is true that the Act is called the Succession Certificate Act, and that it does not refer in terms to assigns of the heirs of deceased persons; but it does not follow that the right of succession is not the primary basis of the claim to recover the debt when it is made by the assignee of the heir, who has to prove not only the assignment, but also the assignor's right of succession.

The petition is therefore dismissed with costs.
