# APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

SIVAMMA (PETITIONER), APPELLANT,

*v.*

SUBBAMMA (COUNTER-PETITIONER), RESPONDENT.*

1894. February 20. March 29.

*Succession Certificate Act—Act VII of* 1889, *s.* 7 (3)—*Power to grant certificate to applicant if he has the best* primâ facie *title thereto—Necessity for some inquiry prior to such a grant.*

The intention of sub-clause (3) to section 7 of the Succession Certificate Act is *not* to save the Court the trouble of making any inquiry at all where the applicant is not heir to the deceased, but it is to allow the *primâ facie* title to the certificate to prevail when a question of law or fact arises on inquiry too difficult to be determined in a summary proceeding.

APPEAL against the order of W. M. Thorburn, District Judge of Cuddapah, dated 16th September 1892, passed on civil miscellaneous petition No. 169 of 1892.

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

*Parthasaradhi Ayyangar* for appellant.

*Krishnamachariar* for respondent.

JUDGMENT.—This was a petition for a certificate under Act VII of 1889 to collect the debts due to one Sesha Reddi, deceased. Sesha Reddi had a son named Venkatanaraina Reddi, and the latter died in November 1886, leaving behind him a widow named Subbamma. The father died on 22nd of March 1889, leaving him surviving, besides Subbamma, a widow named Chalamma and a daughter named Sivamma. The daughter applied for the succession certificate and rested her claim on a will left by Sesha Reddi, dated 4th March 1889, and on a maintenance agreement executed by Subbamma on the 4th August 1889. Petitioner's case was that by the will she was constituted her father's heir, and that his daughter-in-law, Subbamma, acknowledged her preferential right. It is alleged that no application was made by Subbamma, and the order made by the District Judge is "give certificate to Subbamma

* Appeal against order No. 145 of 1892.

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"on security." No reasons are assigned for the order, and it is urged for petitioner (and there is nothing to the contrary on the record) that no inquiry was held at all in regard to the will and the release set up by petitioner. The petitioner's pleader contends that the procedure followed by the Judge is at variance with Act VII of 1889, and we are of opinion that the contention is well founded. The procedure to be followed is prescribed by section 7 of the Act. It contemplates that in every case there should be a summary inquiry, and the Court should make an order for the grant of a certificate according to the result of such inquiry. In any case in which it becomes necessary, in order to decide the right to the certificate, to determine any question of law or fact which is too intricate and difficult for determination in a summary proceeding, the Court is empowered to grant the certificate to the applicant if he appears to be the person having *primâ facie* the best title thereto. The intention is *not* to save the Court the trouble of making any inquiry at all where the applicant is not the heir to the deceased, but it is to allow the *primâ facie* title to the certificate to prevail when a question of law or fact arises on inquiry too difficult to be determined in a summary proceeding. In cases in which no complicated issues are involved, and the issues are capable of being decided without difficulty in a summary proceeding, the Court is bound to determine the right to the certificate by summary inquiry. The difficulty felt must be the result of summary inquiry, and *not the a priori* theory that every inquiry into a special ground of claim urged to the certificate necessarily involves an inquiry too intricate for determination in a summary proceeding.

We set aside the order of the Judge and remand the case for disposal in accordance with law. Costs will abide and follow the result.