I concur with the learned Chief Justice in decreeing this appeal with costs.

Appeal allowed.

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SHEOAMBAR v. DEODAT.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Oldfield and Mr. Justice Brodhurst.

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GANGIA (PETITIONER) *v.* RANGI SINGH (OBJECTOR.)*

Act XXVII of 1860 s. 6—Grant of certificate by District Court—Petition to High Court by objector for fresh certificate—Supersession of certificate granted by District Court.

S. 6 of Act XXVII of 1860 contemplates two different proceedings which may arise under different circumstances. One of these proceedings is an appeal, which has the effect of suspending the "granting," *i.e.*, the *issuing* of the certificate; and the intention of the Legislature was that, upon an adverse order being made, the person objecting to it might thereupon appeal, and the effect of this would be to oblige the District Judge to hold his hand, and not to issue the certificate until the decision of the appeal. The other proceeding is by way of petition to the High Court, after the certificate has been granted by the District Court, to grant a fresh certificate in supersession of the first; and the latter portion of s. 6 shows that the person who obtains the fresh certificate need not be the person who obtained the first, and there is nothing to limit the powers of the Court on petition to grant a fresh certificate to any person, including the person who opposed the granting of the original certificate, who may prove himself entitled thereto, or to confine the exercise of such powers to cases where the first certificate was defective in form.

THIS was an application to the High Court under s. 6 of Act XXVII of 1860 for the grant of a certificate for the collection of the debts due to a deceased person in supersession of a certificate granted by the District Judge of Mirzapur. The facts are sufficiently stated in the judgments of the Court.

Lala *Juala Prasad* for the petitioner.

Munshi *Hanuman Prasad* for the opposite party.

OLDFIELD, J.—The matter before us relates to the grant of a certificate for collection of debts under Act XXVII of 1860. There were two parties who applied, namely, Musammat Gangia, the petitioner before us, and Rangi Singh, the respondent. The Court below refused to grant a certificate to the petitioner, and granted it to the respondent. Musammat Gangia has filed an

* Application No. 172 of 1886 under s. 6 of Act XXVII of 1860, for supersession of certificate granted by W. T. Martin, Esq., District Judge of Mirzapur, dated the 7th July, 1886.

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application, the object of which is to set aside the order granting to Rangi a certificate and to obtain a certificate herself.

A preliminary objection has been raised on the part of the respondent that this Court has no jurisdiction to entertain the petition. In my opinion the objection is valid. The provision in Act XXVII of 1860, upon which the petitioner relies, is that contained in s. 6. By that provision, the granting of a certificate "may be suspended by an appeal to the Sadr Court, which Court may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The Court may also upon petition, after a certificate shall have been granted by the District Court, grant a fresh certificate in supersession of the certificate granted by the District Court."

Thus there are two courses of procedure—first, by appeal before the certificate is granted by the District Court, with a view to obtaining this Court's order that the grant of a certificate shall be suspended pending the order of this Court; and secondly, by petition after certificate is granted, with a view of this Court's granting a certificate in supersession of that granted by the District Court. It is clear that the object of the present petition is not an appeal of the nature alluded to in s. 6, nor, in my opinion, can the applicant succeed by a petition such as is contemplated in s. 6. The object is really to set aside the order granting the certificate and to question the propriety of that order on the merits, which can really only be properly done by way of appeal, and an appeal is not allowed on that ground by the Act.

The remedy contemplated by s. 6 is not given for the purpose of questioning the validity or propriety of the order granting a certificate on its merits, but its object is to enable a fresh certificate to be granted in supersession when rendered necessary by a new state of things. The Act seems to contemplate the finality of an order passed under this section for granting a certificate, leaving a party to resort to a suit to prove title, and this appears to be the view taken by a Full Bench decision of the Sadr Diwani Adalat, N.-W. P, as far back as 1862.—*Gossayn Dheer Geer's Case* (1).

I would on these grounds dismiss this application with costs.

(1) N.-W. P. S. D. A Rep., 1863, vol. i, p. 147

BRODHURST, J.—I regret that I am unable to concur in the judgment of my brother Oldfield, for I take a different view, not only of the law—s. 6 of Act XXVII of 1860—but also of the Full Bench ruling on which he relies.

The section above-mentioned is almost word for word the same as s. 5 of the repealed Act XX of 1841. What may be called the marginal note of s. 5 is as follows:—"The grant of certificate may be suspended by appeal to Sadr Diwani Adalat, which Court may direct to whom certificate shall be granted, &c., and may supersede certificate already granted, and grant fresh certificate."

The High Court now has exactly similar powers under s. 6 of Act XXVII of 1860 as the Sadr Diwani Adalat had under s. 5 of Act XX of 1841. When there are rival applicants for a certificate the High Court is, I think, competent either on appeal or upon petition, to interfere with the District Judge's order at any time. It may, on appeal, suspend the granting of a certificate, and "may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The Court may also upon petition, after a certificate shall have been granted by the District Court, grant a fresh certificate in supersession of the certificate granted by the District Court," and such fresh certificate "shall entitle the person named therein to receive all monies that may have been recovered under the first certificate from the person to whom the same may have been granted."

In the Full Bench case above alluded to, there was only one applicant for a certificate under Act XXVII of 1860, to collect debts due to the estate of one Surdha Geer. The District Judge refused to grant the certificate, "as it appears that there is now no property belonging to the estate of the deceased Surdha Geer, and the applicant has failed to show that the deed of gift executed by Surdha Geer in favour of Deo Geer is not a genuine document, and as he has also failed to show that there are any sums due to the deceased Surdha Geer, his application for a certificate is hereby rejected." The judgment of four Judges of the Full Bench is as follows:—"The Court, with the exception of Mr. Roberts, who has recorded separately his reasons for dissent, are of opinion that Act

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XXVII of 1860 admits of an appeal from the decision of the lower Court only in the two cases set forth in s. 6 of that enactment, in which section the course to be followed by the Sadr Court in disposing of the appeal is prescribed; and the Court, with the exception of Mr. Roberts, are of opinion that no appeal lies from an order of the Judge rejecting an applicant's claim for a certificate, and that such order is final, the applicant, if dissatisfied therewith, having his remedy by instituting a suit in the Civil Court for the recovery of the property of the deceased whose estate he claims to administer to." Mr. Roberts went further and observed: "I would adhere to the Calcutta precedent cited above (2). In my opinion the Sadr Court may, under s. 6 of Act XXVII of 1860, grant a certificate to a party who has been wrongfully denied the same, though there has been no certificate granted to an opposing petitioner by the District Court."

From the whole of the proceedings, it is obvious that the Judges of the Full Bench had under consideration a case in which a certificate had not been granted to anyone, and the petition of the sole applicant had been rejected. The majority of the Judges held that, under such circumstances, the order of the District Judge was final; but they also observed that Act XXVII of 1860 "*admits of an appeal*" from the decision of the Court "*in the two cases*" set forth in s. 6 of that enactment. One of these two cases is obviously that referred to in paragraph 1 of the section, but the other apparently must be that comprised in paragraph 2; and if so, the learned Judges must have considered the petition therein alluded to to be a petition of appeal. The section under consideration has, I think, been unskilfully drawn. Proceedings under Act XXVII of 1860 are as a rule brief. In the majority of such cases, it would be possible for a District Judge to record the evidence and grant and issue the certificate on a singe day. It is difficult to imagine a case in which it would be possible for the High Court to suspend granting of a certificate. Moreover, it is not apparent why the High Court should be empowered to suspend the granting of a certificate, and to declare the party to whom the certificate should be granted, and should not be authorized to exercise similar powers, perhaps only a day or two later, when the certificate had been granted and had

(2) *Anand Moyee Chowdhrain* v. *Sheeb Chunder Roy*—21st March, 1852.

or had not been issued; but however that may be, I entertain no doubt that the High Court is competent under s. 6 of Act XXVII of 1860, either by appeal or upon petition, before and after the certificate may have been granted, to decide which of the rival applicants should be granted the certificate, and to order accordingly. Other judgments, besides the Full Bench ruling above mentioned, have been referred to. The only one, however, which I consider it necessary to notice is by Straight and Oldfield, JJ., in F. A. from Order No. 72 of 1879. In that judgment, which apparently is unreported, is the following passage:—"In the case before us, the proper form of procedure was by petition; but assuming that we are at liberty to regard the application before us as a petition, we do not consider that the petitioners have shown sufficient grounds for superseding the certificate granted to Musammat Nabli." From this it may fairly be presumed that the learned Judges would have superseded the certificate, and have granted a fresh certificate in favour of the petitioners, the rival applicants, had the petitioners shown sufficient grounds to the Court for the passing of such orders.

For the reasons given above, I am of opinion that the preliminary objection taken on behalf of the certificate-holder, Rangi, is not valid.

[In consequence of this difference of opinion, the case was referred to and re-argued before a Bench consisting of Edge, C. J., and Oldfield and Brodhurst, JJ.

The parties were represented as before. The Court gave judgment, first, upon the preliminary objection raised by the respondent to the hearing of the petition.]

EDGE, C. J.—We think it will be better first to dispose of the preliminary objection as to the petitioner's right to apply for supersession of the certificate already granted, and for the grant of a fresh certificate to herself. For the purpose of dealing with this point, it should be stated that the petitioner applied for the grant of a certificate under Act XXVII of 1860, and the respondent opposed her application, and applied on his own behalf for the grant of a certificate to himself. The Judge made an order granting a certificate to the respondent, and it appears that the certificate was

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issued. No appeal was preferred under s. 6 of the Act. It has been contended on behalf of the respondent that the petition would not lie in this case, and that the only remedy of a person who originally opposed the granting of a certificate under the Act, is an appeal from the Judge's order to be brought prior to the actual issue of the certificate. I am of opinion that this would be placing an incorrect interpretation upon the provisions of s. 6. It appears to me that the section contemplates two different proceedings which may arise under different circumstances. It contemplates an appeal which is to have the effect of suspending the granting—which I take to mean the *issuing*—of the certificate, and I interpret the word "granting" in this manner, because, until there has been an order for granting the certificate to a particular person, it is difficult to see how any one would have a *locus standi* to bring an appeal in the matter. The intention of the Legislature appears to me to have been that, upon an adverse order being made, the person objecting to it might thereupon bring his appeal, and the effect of this would be to oblige the Judge to hold his hand, and not to issue the certificate until the decision of the appeal. My reason for this opinion is that, on the appeal, the Court would have power to declare the party to whom "the certificate" (to use the words of the Act) should be granted, and might also, in lieu of so declaring, direct further inquiries to be made as to the title—I presume with the object of enabling the Court to ascertain to whom the certificate should be granted. There is no provision in s. 6 for the event of a certificate having been already granted and monies collected under it, and the Court afterwards deciding in appeal that the certificate should be set aside and granted to another person. But if we look at the provisions of the section as to a petition for the granting of a fresh certificate, we find it is provided that, in the event of the Court granting a fresh certificate in supersession of the one already granted, all the payments made *bonâ fide* to the person holding the original certificate shall be valid payments; and further, that the person obtaining the fresh certificate on petition shall be entitled to recover from the holder of the superseded certificate all monies which had been collected by him. This latter portion of the section plainly shows that it was contemplated that the person who obtained the fresh certificate may not be the person who obtained the first

certificate, and disposes of the learned Munshi's contention that a fresh certificate would only be granted on petition in cases where the first certificate was defective in form. Now, there is nothing in the section to limit the powers of the Court on petition to grant a fresh certificate to any petitioner who may show himself to be entitled thereto. There is nothing to show that such fresh certificate is not to be granted to the person who was dissatisfied with and opposed the granting of the original certificate; and I see no reason for placing on the terms of the section the narrow construction contended for by the learned Munshi. I am therefore of opinion that we have power to entertain the petitioner's application for grant of a certificate to her by supersession of the original certificate granted to the respondent, and that the preliminary objection consequently fails.

OLDFIELD, J.—Upon further consideration, I concur with the learned Chief Justice. At first I doubted whether it was intended that by means of a petition the propriety of the order granting the first certificate should be questioned. My reason for this doubt was that such a power would ordinarily be exercised by way of appeal, and that while an appeal is given by s. 6 of the Act, it is not given for this purpose. There may, however, be a good reason for this. Had this question been taken up in appeal, the effect would have been to cancel the first order and to invalidate the original certificate, and all acts that might have been done under it. That was probably not intended by the Legislature, which therefore gave a power on petition of superseding the certificate only, leaving valid what had been done under it. This being so, my difficulty in construing s. 6 has to a great extent been removed, and I concur in the opinion expressed by the learned Chief Justice.

BRODHURST, J.—For the reasons I have already stated, I concur with the learned Chief Justice in holding that the preliminary objection is not valid, and that this application can be entertained by this Court under the second paragraph of s. 6. of Act XXVII of 1860.

[The application was then heard and granted.]

Application allowed.