

1898
March 28.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.
RAM KUAR AND ANOTHER (OPPOSITE PARTIES) v. SARDAR SINGH
(APPLICANT).*

Act No. VII of 1889 (Succession Certificate Act) sections 6 and 7—Certificate to collect debts—Minor.

Held that a certificate of succession may be granted under Act No. VII of 1889 to a minor through his next friend. *Kali Coomar Chatterjee v. Tara Prosunno Mookerjee* (1) referred to.

IN this case Sardar Singh, a minor, applied through his next friend Dip Chand for a certificate under section 6 of Act No. VII of 1889 to collect debts due to one Gur Prasad his alleged adoptive father. On this application notices were duly issued to the other relations of the deceased, but on the day fixed for the hearing no one appeared and the District Judge granted a certificate, as prayed, to the applicant. At the hearing, the applicant's next friend appeared and gave evidence to the effect that the applicant was duly adopted by the wife of Gur Prasad in pursuance of an authority given by him to her to adopt. After the certificate had been granted the two widows of Gur Prasad, Ram Kuar and Mahtab Kuar appealed against the order of the District Judge, on the ground that there was no legal evidence of the adoption of the applicant.

Mr. D. N. Banerji and Babu Jogindro Nath Chaudhri for the appellants.

Munshi Ram Prasad and Pandit Moti Lal for the respondent.

EDGE, C. J., and BURKITT, J.—Kunwar Sardar Singh, minor, made an application to the District Judge of Aligarh by his next friend under Act No. VII of 1889, for a certificate to collect debts alleged to have been due to his alleged adoptive father, then deceased. Notice to persons who might have been interested in opposing the application were duly served. These persons had three several opportunities of opposing the grant of such certificate. No one opposed the grant, and the District Judge made

* First Appeal from Order No. 100 of 1897 from an order of L. G. Evans, Esq., District Judge of Aligarh, dated the 5th August 1897.

an order granting a certificate as prayed. After the grant of the certificate had been made Musammat Ram Kuar and Musammat Maltab Kuar, filed an appeal against the order of the District Judge, on the grounds that there was no legal evidence of permission to adopt the minor having been given by the deceased creditor to his wife, and that a certificate should not have been granted. This question which has been argued before us is—can in law a certificate under Act VII of 1889 be granted to a minor? That is the only question which has been presented to us for consideration in argument. It has been contended on behalf of the appellants that a certificate under Act No. VII of 1889 cannot be granted to a minor although he appears and applies for it through his next friend. Mr. *Dwarka Nath Banerji*, in his argument, was compelled to admit that it was not intended that a debt due in such a case to a minor should by effluxion of time become barred by limitation, and he contended that any near relation of such a minor might apply for, and obtain, a grant of a certificate to himself to collect the debts which might be due to the minor. For that purpose Mr. *Dwarka Nath Banerji* had further to contend that the grant of a certificate gave the holder of such certificate a cause of action. In our opinion the grant of a certificate neither gives a cause of action nor is it a part of the cause of action. Section 4 of Act No. VII of 1889 suggests quite the contrary. That section does not debar a person entitled from suing until such person has obtained a certificate, but merely prohibits the Court from making the decree in favour of such person until that person has produced a certificate under the Act, or one or other of the documents referred to in the section. If the granting of a certificate was part of the cause of action, it would follow that no suit would lie unless before the commencement of the suit a certificate had been obtained. Now, in our opinion, the Legislature intended under Act No. XXVII of 1860 and under Act No. VII of 1889 that a person to whom a certificate might be granted should be a person who had some title or interest in the debt to collect

1898

 RAM KUAR
 v.
 SARDAR
 SINGH.

1898

RAM KUMAR
v.
SARDAR
SINGH.

which a certificate is applied for, and that a mere interest in the minor or in the person entitled to sue for the debt is not sufficient to entitle a stranger, or even a relation, to a certificate. That is the conclusion which we draw from section 3 of Act No. XXVII of 1860, from clause (d), sub-section 1 of section 6 of Act No. VII of 1889, from clause (b) of sub-sections 1 of section 7 of the same Act, and from sub-sections 2, 3 and 4 of section 7 of the same Act. Now the Legislature has not prohibited, by Act No. VII of 1889, the grant of a certificate to a minor through his next friend, nor was there any such prohibition in Act No. XXVII of 1860. Where the Legislature considered that probate or administration should not be granted to a minor, it said so expressly. Such prohibition will be found in sections 183 and 189 of Act No. X of 1865 and in section 8 of Act No. V of 1881. As far back as 1879, the Calcutta High Court in *Kali Coomar Chatterjee v. Tara Prosunno Mookerjee* (1) inferentially decided that a certificate to collect debts under Act No. XXVII of 1860 might be granted to a minor through his next friend. In our opinion the Calcutta Court was right. We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Burdett.

HARJAS RAI AND ANOTHER (DEFENDANTS) v. RAMESHAR (PLAINTIFF)*

Execution of decree—Sale in execution—Stay of sale upon payment into Court of decretal amount and costs—Civil Procedure Code, section 291, — Act No. IV of 1882 (Transfer of Property Act), section 89.

Held that section 291 of the Code of Civil Procedure must be taken to have modified section 89 of Act No. IV of 1882 when the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or when it is proved to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale. *Raja Ram Singhji v. Chundi Lal* (1) followed.

* Second Appeal, No. 120 of 1897, from a decree of Pandit Raj Nath, Sahib, Subordinate Judge of Moradabad, dated the 24th November 1896, confirming a decree of Munshi Shiva Prasad, Munsif of Bijnor, dated the 10th August 1896.

1898

April 4th.