REVISIONAL CIVIL.

1910
February 7.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.
BISMILLA BEGAM (APPLICANT) *v.* TAWASSUL HUSAIN (OPPOSITE PARTY).*
Act No. VII of 1889 (Succession Certificate Act), sections 4 and 7—Certificate not to be given for collection of part only of a debt—Muhammadan law—Dower.

Held that no certificate could be granted to one of the heirs of a Muhammadan lady, who had died leaving a dower debt unrealized, for collection merely of a part of the dower debt of the deceased. *Muhammad Ali Khan* v. *Puttan Bibi*, (1) followed. *Akbar Khan* v. *Bilkisara Begam* (2) referred to.

THE facts of this case were as follows :—

Niaz Banu Begam was married to Tawassul Husain. The dower fixed was Rs. 57,000 and was deferred. Niaz Banu Begam died on the 8th of November, 1908, leaving as heirs her husband, her mother, and her uncle's son. The mother was entitled to Rs. 17,000 out of the dower money. She relinquished (orally) her claim to that amount except to Rs. 800 out of the total. Having abandoned her claim to Rs. 16,200, she applied for a succession certificate for Rs. 800. Tawassul Husain, the husband of the deceased, objected to the application on several grounds, *inter alia* that the applicant could not obtain a succession certificate of a part of the debt only. The Munsif granted the certificate, holding that she was applying for that part of the dower which alone was her share and which she had every right to claim. The District Judge reversed the order of the Munsif. The petitioner applied to the High Court for revision of the Judge's order.

Dr. *Tej Bahadur Sapru*, for the applicant, contended that the District Judge acted illegally in refusing to grant the succession certificate. There was nothing in law to prevent an heir from recovering a share of the debt due to the deceased. There was no definition of "debt" in the Succession Certificate Act. The rulings in *Muhammad Ali Khan* v. *Puttan Bibi* (1) and *Akbar Khan* v. *Bilkisara Begam* (2) did not apply. The debt due from a husband to his wife was a single debt, and after her death it was split up into three different debts and the shares of the three heirs were defined, and what one heir could claim

* Civil Revision No. 62 of 1909.

(1) (1896) I. L. R., 19 All., 129. (2) Weekly Notes, 1901, p. 125.

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the other could not. A petitioner for a certificate could apply for his share of the debt only, and if he could apply for so much as would come into his hands why should not he apply for a part only of the sum that he could legitimately claim? The two cases referred to are authority for the contention that a part of a debt could be claimed. The reason for disallowing an application for part of a debt was based on a desire for limitation of actions. But the case was different where a person claimed a portion of his share of the debt and abandoned the rest—it was not that he postponed the claim for the recovery of the balance.

There was in this case a single contract originally, but by operation of the Muhummadan law a wife's dower became divisible among her heirs.

Maulvi *Muhammad Ishaq*, for the opposite party, was not called upon to reply.

KNOX and KARAMAT HUSAIN, JJ.—This application for revision is an application by a lady, who as mother-in-law of a Muhammadan gentleman sets forth that she is entitled to Rs. 17,000 out of a debt amounting to Rs. 51,000 due by that gentleman to his wife. Coming to the court the lady says that she gives up her claim to the whole of the 17,000 rupees with the exception of Rs. 800 on the ground that she has no hope of receiving more than Rs. 800 from the estate of the lady to whom the dower debt is due. The lower appellate court refused to grant her the certificate that she asked for under section 7 of Act VII of 1889, and in support of its refusal refers in its judgment to the case of *Akbar Khan* v. *Bilkisara Begam* (1). The learned Judges who decided the last named case held that they were bound to follow the ruling laid down in *Muhammad Ali Khan* v. *Puttan Bibi* (2). In that case a Muhammadan lady, who was entitled to something more than eleven lakhs of rupees as her dower, died, and the father of the deceased lady brought a suit against the husband of the deceased lady to recover the share which he took by inheritance in the dower debt. He applied for a certificate entitling him to collect debts, not to the amount of eleven lakhs of rupees, but to the amount of one lakh fifty thousand rupees,

(1) Weekly Notes, 1901, p. 125. (2) (1896) I. L. R., 19 All., 129.

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the father's share in that debt. The Judge before whom the application came declined to grant her the certificate unless the applicant paid the two per cent. duty on the whole debt, namely, the debt of eleven lakhs of rupees. His refusal was supported by this Court, and the learned Judges before whom the appeal came observed that there had been a uniform series of decisions in this Court, according to which a certificate cannot be granted to collect a part only of a debt. We have been referred to no case breaking this uniformity of decisions, with the exception of one case, *Akbar Khan* v. *Bilkisara Begam*. This case has not been reported in the authorized law reports, and we say no more about it than this that the learned Judges, while professing, and one of them with diffidence, to follow the precedent of *Muhammad Ali Khan* v. *Puttan Bibi*, seem, in the conclusion at which they arrived, to have overlooked the real point decided in *Muhammad Ali Khan* v. *Puttan Bibi*. We are not prepared to decide otherwise than this Court decided in the case of *Muhammad Ali Khan* v. *Puttan Bibi*. Hard cases may arise if parties elect to make applications under the Succession Certificate Act, and this case may be one of such hard cases. But in most, if not in all of them, the difficulty can be avoided, it appears to us, by proceedings taken under the Probate and Administration Act. We reject the petition with costs.

Petition rejected.

APPELLATE CIVIL.

1910

February 7.

Before Mr. Justice Richards and Mr. Justice Tudball.

MOHAR SINGH AND OTHERS (DEFENDANTS) *v.* HET SINGH (PLAINTIFF).*

Hindu law—Will—Validity of bequest to complete a temple and instal an idol.

Held that a bequest to complete the building of a temple which had been commenced by the testator and to instal and maintain an idol therein is a valid bequest under the Hindu Law. *Bhupati Nath Smritititrtha*, v. *Ram Lal Moitra*, (1) followed.

THIS was an appeal arising out of an application for probate of the will of one Umrao Singh, the material portion of which is set forth in the judgment of the Court. The application was opposed by the widows of the testator, as also by one Het Singh,

*First Appeal No. 255 of 1908 from a decree of Jagat Narain, Additional Subordinate Judge of Aligarh, dated the 30th of June 1908.

(1) (1909) 14 C. W. N., 18.