

pending file and disposed of according to law. Costs will be costs in the cause.

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GANESHI LAL
v.
CHARAN
SINGH.

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February, 1913.

Appeal allowed and cause remanded.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

JAI DEI (APPLICANT) v. BANWARI LAL, (OPPOSITE PARTY)*

Act No. VII of 1889 (Succession Certificate Act), section 9—Certificate in favour of Hindu widow to realize interest only—Certificate ultra vires.

Held that, where a certificate was granted to a Hindu widow for collection of debts due to her late husband, it was not competent to the Court, in lieu of requiring security from the grantee, to give a certificate for realization of interest only without disturbing capital. Shib Dei v Ajudhia Prasad (1) referred to.

IN this case one Musammat Jai Dei, a Hindu widow, applied under section 6 of the Succession Certificate Act, 1889, for a certificate in respect of four debts due to her late husband. The application was opposed by certain reversioners, who asked the court to take security from the widow, as there was every likelihood of her wasting the corpus of the property if it reached her hands. On that the Judge passed the following order:—"The certificate asked for is granted, with the condition that the applicant may not disturb the capital sum and shall draw interest only." Musammat Jai Dei appealed to the High Court, urging that the order in question was *ultra vires* the condition imposed being one which it was not in the power of the court to annex to the grant of a certificate.

Dr. Surendra Nath Sen, for the appellant.

The Hon'ble Dr. Tej Bahadur Sapru, for the respondents.

TUDBALL and MUHAMMAD RAFIQ, JJ:—The appellant Musammat Jai Dei applied under section 6 of Act VII of 1889, the Succession Certificate Act, in respect of four debts due to her deceased husband. The application was opposed by certain reversioners, who asked the court to take security from the widow, as there was every likelihood of her wasting the corpus of the property if it reached her hands. On that the District Judge passed the following order:—"The certificate asked for is granted with the condition that the applicant may not disturb the capital sum and shall draw interest

* First Appeal No. 148 of 1912 from an order of T. L. Johnston, District Judge of Farrukhabad, dated the 1st of August, 1912.

(1) F. A. I. C., No. 108 of 1910, decided on the 13th of February, 1911.

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only. This will obviate the necessity for security." Musammatt Jai Dei has come here on appeal, and it is urged that the condition imposed by the court is *ultra vires* and that so much of the order passed is illegal. The case is similar in all respects to the case of *Musammatt Shib Dei v. Ajudhia Prasad* (1), decided on the 13th of February, 1911. As in that cause, all that the Court could do was to require as a condition precedent to grant of the certificate that the widow should give security under section 9 for rendering an account of the debts and securities received by her and for indemnifying the persons who may be entitled to the whole or any part of the debt. The certificate as granted by the Judge would only entitle the widow to recover from the debtors the interest on the debts. It is not a question of the—"securities and interest on securities"—as defined in section 3 of the Act. We set aside the order of the Court below and direct that Court to readmit the application and to proceed to enter into and decide as to whether or not there is any necessity to take security from the widow under the circumstances. The parties will be allowed to go into evidence on the point and on that evidence the Court will come to a conclusion. If it comes to the conclusion that security is necessary, it will grant a certificate conditional on her furnishing security. If it comes to the conclusion that security is not necessary, it will grant a certificate unconditionally. The costs of this appeal will abide the result.

Appeal allowed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

PARSOTAM DAS AND OTHERS (PLAINTIFFS) v. PATESRI PARTAB NARAIN SINGH AND OTHERS (DEFENDANTS).*

Act No. III of 1877 (Indian Registration Act), section 21—Registration—How far a misdescription of property comprised in a deed may invalidate registration.

Where one of several villages comprised in a registered mortgage deed was described as being in a wrong tappa, the description being, notwithstanding this error, sufficient for identification, it was held that the misdescription was not sufficient to invalidate the mortgage as regards the village in question. *Boni Madho Singh v. Jagat Singh* (2) referred to.

THIS was a suit for sale on a mortgage. The mortgage comprised several villages and was registered, but the court of first

* First Appeal No. 219 of 1911 from a decree of Shiva Prasad, Subordinate Judge of Gorakhpur, dated the 15th of December, 1910.

(1) F. A. I. O., No. 108 of 1910. (2) (1912) 10 A. L. J., 33.

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