

Before Mr. Justice Tudball and Mr. Justice Chamiar.

RUPAN BIBI (PLAINTIFF) v. BHAGELU LAL (DEFENDANT.)*

*Act No. VII of 1889 (Succession Certificate Act), sections 16 and 18—
Certificate of succession—Suit to set aside certificate and decree passed
in favour of the holder.*

A succession certificate granted under the provisions of the Succession Certificate Act, 1889, is conclusive as against the debtor under section 16 of the Act, and it can be revoked by the District Judge only under section 18 of the Act. No suit will lie to have a succession certificate and a decree obtained by the holder thereof set aside on the mere ground that the certificate was obtained by the use of false evidence.

THE facts of this case were as follows :—

One Ajudhia Prasad died, and Bhagelu Lal applied to the District Judge for a succession certificate in order to enable him to collect debts due to the estate, among them being a debt due from Rupan Bibi. After inquiry the District Judge granted a certificate, on the strength of which a suit was brought and a decree obtained against Rupan Bibi. The present suit was then brought by Rupan Bibi, seeking to set aside the decree against her and the succession certificate granted to Bhagelu Lal upon the ground that the latter had been obtained by means of false evidence. The court of first instance dismissed the suit. The plaintiff appealed to the High Court.

The Hon'ble Mr. *Abdul Raof* and *Maulvi Shafi-uz-zaman*, for the appellant.

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

TUDBALL and CHAMIER, JJ.—This appeal arises out of a suit brought by the plaintiff appellant to have it declared that a certain succession certificate granted to the defendant by the District Judge on the 2nd of July, 1909, had been obtained by means of false evidence and should therefore be set aside, and also that a decree, dated the 23rd of March 1911, which had been passed on the basis of the said certificate might also be set aside. It appears that one Ajudhia Prasad died, and the defendant applied to the District Judge for a succession certificate in order to enable him to collect debts due to the estate, among them being one due from the present plaintiff appellant. After inquiry the District Judge granted the certificate. A suit was brought against the present

*First Appeal No. 420 of 1912, from a decree of B. J. Dalal, District Judge of Azamgarh, dated the 7th of September, 1912.

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plaintiff and was decreed. It is this decree which the present plaintiff seeks to set aside. In our opinion no such suit will lie. The certificate is conclusive as against the debtors under section 16 of the Succession Certificate Act. It can be revoked by the district court under section 18 of the same Act, and in our opinion no suit will lie to have the certificate and the decree set aside on the mere ground that the certificate was obtained by the use of false evidence. The appeal fails and is dismissed with costs.

Appeal dismissed.

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Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

MUHAMMAD AMIR AND OTHERS (PLAINTIFFS) v. SUMITRA KUAR AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), section 11—Res judicata—Suit by plaintiffs as members of the Muhammadan community for a declaration that certain property was waqf—Previous similar suit by other plaintiffs

Where a suit had been brought by two persons as members of the public for a declaration that certain property was waqf property, and it had been decided that the property in question was not waqf; held that this decision operated as *res judicata* in the case of any other similar suit which might be brought by other members of the public as such claiming a similar declaration.

THIS was a suit by nine plaintiffs who sued as members of the Muhammadan community and asked for a declaration that a certain mosque, mausoleum, the site of an *imambara*, together with a flower garden appertaining to the mosque and *imambara*, and a pacca well were waqf property, and also other reliefs. The main defence was that the suit was barred by the principle of *res judicata*, upon the following facts. In 1887 two persons had brought a suit in respect of certain property, including that now in suit, against the predecessors in title of the present defendants, who were auction purchasers in execution of a decree against one Abdullah Khan. In that suit it was expressly held that the plaintiffs had failed to prove that the property, or any part of it, was waqf. Both the courts below sustained this contention and dismissed the suit. The plaintiffs appealed to the High Court.

Mr. B. E. O'Connor (with him Mr. D. R. Sawhny, and Dr. S. M. Sulaiman), for the appellants.

*Second Appeal No. 496 of 1913 from a decree of Austin Kendall, District Judge of Cawnpore, dated the 28th of January, 1913, confirming a decree of Murazi Lal, Subordinate Judge of Cawnpore, dated the 25th of November, 1912.