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matter of fact passed upon a consideration of the allegations made in that application and in the reply filed on behalf of the plaintiffs and all the circumstances of the case as a whole. A court has a right to proceed under order XL, rule 1, where it appears to it to be just and convenient to do so, and the order is not improper or illegal merely because it was made *suo motu*. Finally it was contended before us that the order was made without notice to the parties and without giving the defendants in particular an opportunity of showing cause against it. We have heard counsel for the defendants at length on the facts of the case, and it seems to us that the order was a good and equitable order, suited to the circumstances of the case, and we are not, therefore, disposed to interfere with it merely on the ground that formal notice of the intention to take action under order XL was not given to the parties. The result is that this appeal fails and we dismiss it. We leave the parties to bear their own costs of the appeal.

Appeal dismissed.

Before Mr. Justice Ryves and Mr. Justice Piggott.

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November, 18.

RANG LAL (DEFENDANT) *v.* ANNU LAL AND OTHERS (PLAINTIFFS)*

Act No. VII of 1889 *(Succession Certificate Act), section 4—Succession certificate—Assignment of debt covered by certificate—Certificate also made over to assignees—Rights of assignees.*

The widow of a separated Hindu obtained a certificate of succession for the collection of a debt due to her deceased husband. She assigned the debt and also handed over the succession certificate to the assignees. *Held* that the assignees were competent to sue and get a decree for the debt. The widow could undoubtedly assign the debt, and it was not necessary, even if it were possible, for the assignees to obtain cancellation of the certificate granted to the widow and the issue of a fresh certificate in their favour.

Karuppasami v. *Pichu* (1) distinguished. *Allahdad Khan* v. *Sant Ram* (2) not followed. *Durga Kunwar* v. *Matu Mal* (3) referred to.

THE facts of this case were as follows :—

On the 21st of February, 1898, Megh Nath as manager of a joint Hindu family executed a mortgage of three biswas odd in mauza Bhojpur, in favour of Mihin Lal and Duli Ram, who advanced

*Second Appeal No. 78 of 1913 from a decree of E. C. Allen, District Judge of Mainpuri, dated the 22nd of August, 1912, confirming a decree of Pratap Singh, Additional Subordmate Judge of Mainpuri, dated the 12th of January, 1912.

(1) (1891) I. L. R., 15 Mad., 419. (2) (1912) I. L. R., 35 All., 74.
(3) (1913) I. L. R., 35 All., 311.

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Rupees 600 each on the security of the said property. Both mortgagees died. Plaintiffs 1 to 4 are the surviving members of the joint family of which Mihin Lal was the head. Duli Ram left surviving him an adopted son, Gulab. Gulab also died, leaving a widow, Musammat Bichitra Kunwar, as sole heir. She applied for and obtained a succession certificate under Act VII of 1889, enabling her to realize the amount due to Gulab under the mortgage. This debt was the only one specified in the certificate, and Musammat Bichitra Kunwar alone was entitled to it. She, however, assigned her mortgagee rights to three persons and at the same time gave them the certificate she had received. These three persons are plaintiffs 5 to 7. The defendants are Megh Nath, his son Rang Lal, and a minor grandson. Musammat Bichitra Kunwar was also cited as a *pro formâ* defendant. Rang Lal alone defended the suit. One of the principal grounds of defence related to Musammat Bichitra Kunwar's alleged incapacity to assign the mortgagee rights of Duli Ram. This incapacity was based solely on the allegation that Gulab was not the adopted son of Duli Ram. Both the lower courts found against the defendant on this point and decreed the suit. The defendant appealed to the High Court.

Dr. *Satish Chandra Banerji* and Munshi *Gulzari Lal*, for the appellant.

The Hon'ble Pandit *Moti Lal Nehru*, for the respondent.

RYVES and PIGGOTT JJ:—This appeal arises out of a suit for sale on a mortgage. The facts are as follows :—

On the 21st of February, 1898, Megh Nath as manager of a joint Hindu family executed a mortgage of three biswas odd in mauza Bhojpur, in favour of Mihin Lal and Duli Ram, who advanced Rs. 600 each on the security of the said property. Both mortgagees are dead. Plaintiffs 1 to 4 are the surviving members of the joint family of which Mihin Lal was the head. Duli Ram died leaving surviving him, an adopted son, Gulab. Gulab died, leaving a widow, Musammat Bichitra Kunwar, as sole heir. She applied for and obtained a succession certificate under Act VII of 1889, enabling her to realize the amount due to Gulab under the mortgage. This debt was the only one specified in the certificate, and it is to be noted that Musammat Bichitra Kunwar alone was entitled to it.

She, however, assigned her mortgagee rights to three persons and at the same time gave them the certificate she had received. These three persons are plaintiffs 5 to 7. The defendants are Megh Nath, his son Rang Lal, and a minor grandson. Musammat Bichitra Kunwar was also cited as a *pro formâ* defendant.

Rang Lal alone defended the suit. The only part of the defence that need now be considered relates to Musammat Bichitra Kunwar's alleged incapacity to assign the mortgagee rights of Duli Ram. This incapacity was based solely on the allegation that Gulab was not the adopted son of Duli Ram.

Both the lower courts have found against the defendant on this point and have decreed the suit.

The only point pressed in this appeal before us is that section 4 of the Succession Certificate Act is a bar to plaintiffs 5 to 7, obtaining a decree, because they had not obtained a certificate under that Act.

This line of defence was not taken in the written statement, but in disposing of the issue as to whether Musammat Bichitra Kunwar was Duli Ram's heir, the first court held that as she had obtained a succession certificate "in respect of Duli Ram's share in the mortgage in suit, apart from anything else, it entitled her to recover the debt from the defendants . . . I hold that in the first place it is proved that Gulab was the adopted son of Duli Ram, and secondly the succession certificate filed by the plaintiffs (5 to 7) in favour of their vendor is a sufficient authority for them to maintain the suit." As both these findings were attacked in appeal to the court below, the appellant is entitled in second appeal to raise the question whether the Succession Certificate Act prevents plaintiffs 5 to 7 from obtaining a decree.

Two cases have been cited in support of the appeal. *Karuppasami* v. *Pichu* (1) and *Allahdad Khan* v *Sant Ram* (2). In the first case, the head note runs:—"One Suppamal lent a sum of money to the defendant and died leaving an adopted son, who assigned the debt to the plaintiff. Neither the plaintiff nor his assignor obtained a certificate under Act VII of 1889. The plaintiff now sued to recover the amount of the assigned debt.

(1) (1891) I. L. R., 15 Mad., 419. (2) (1912) I. L. R., 35 All., 74.

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Held, that the plaintiff was not entitled to recover, no certificate having been obtained under Act VII of 1889."

In the present case a certificate under the Act had been obtained by the assignor, and it was produced by the assignee plaintiff. This fact distinguishes the Madras case.

In the second case, one Bahadur Khan, the mortgagee, died leaving a number of heirs. Of these, one Farzand Ali obtained a succession certificate for the collection of the mortgage debt due to Bahadur Khan. Farzand Ali subsequently assigned the mortgage debt to Sant Ram, together with his right to sue for the same, and made over to the assignee the succession certificate which he had obtained. Sant Ram brought a suit on the strength of that assignment for enforcement of the mortgage. A Divisional Bench of this Court held that the suit was not maintainable. In this case also the facts are different from the present case. There one heir, out of several, obtained a certificate to collect a debt due to all the heirs. This certificate gave him a personal right to sue; and such a right is expressly declared to be incapable of transfer. [Section 6 (*e*) of Act IV of 1882]. Besides Farzand Ali was only entitled to part of the mortgage; he could not therefore assign the whole mortgage debt. The actual decision of the case then does not help the appellant. There are, however, certain observations of the learned Judges in their judgement which do support his contention. They say:—"The Act does not in so many words say that the certificate must be one in favour of the plaintiff, but we think that that is the meaning of the provision. The declared object of the Act is to facilitate the collection of debts on successions and to afford protection to parties paying debts to the representatives of deceased persons. Section 16 of the Act protects a debtor of a deceased person who pays a debt in good faith to the person to whom the certificate was granted. An assignee of the person to whom the certificate was granted does not appear to come within the section. From this it would appear that the person to sue for the debt is the person to whom the certificate was granted."

With all respect to the learned Judges concerned, we think that in these remarks they went beyond what was necessary for the decision of the particular case before them, and we are unable to

concur in the line of reasoning adopted. They had before them a plaintiff with a defective title: he was suing to collect the whole of a certain mortgage debt on the strength of a transfer from the owner of a part only of the mortgagee rights. He claimed that this defect was cured by the fact that his transferor had received a certificate for the collection of the entire debt: the learned Judges rightly point out that section 16 of the Succession Certificate Act (No. VII of 1889) protects a debtor who makes a payment to the holder of a succession certificate, but contains no provision extending such protection to a transferee from such holder. We have also ventured to point out that the right to sue for the entire debt conferred by a succession certificate is a personal right which is not transferable apart from the ownership of the debt itself. These considerations are quite sufficient to justify the decision in the reported case. In the case now before us, however, we must hold on the findings arrived at in the court below that Musammat Bichitra Kunwar was the owner of the entire mortgage debt, and she had a right of transfer in respect of this ownership:—*Vide Durga Kunwar* v. *Matu Mal* (1). The facts of that case were very much on all fours with those now before us, and it is curious to note that the right of the transferee from the widow to maintain a suit was there affirmed, without any question being raised as to a succession certificate having been obtained either by the widow or by her transferee. The present case is a much stronger one. The only point taken before us is that the suit is barred, as regards the plaintiffs Nos. 5 to 7, by the provisions of section 4 of Act VII of 1889, because they are unable to produce a succession certificate for the collection of their share of the mortgage debt. The answer is that they have produced such a certificate, duly granted to Musammat Bichitra Kunwar, and made over to them by that lady when she transferred to them what she had a perfect right to transfer, *viz.*, her ownership in respect of a share of the debt itself. We are at least doubtful whether these plaintiffs could legally have obtained a succession certificate in their own names. They certainly could not have done so without first obtaining an order for the cancellation of the certificate already granted to Musammat Bichitra Kunwar. We do not believe that the Legislature in enacting Act No. VII of 1889 intended either to take away from

(1) (1913) I. L. R., 35 All., 311.

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the holder of a succession certificate any right of transfer he might possess in respect of the *corpus* of the debt itself, or to require that any such transfer should necessarily be followed by a revocation of the succession certificate already granted and the collection of fresh fees upon the grant of a second one in favour of the transferee.

We hold, therefore, that this suit is maintainable as it stands, and we dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

1913
November, 1.

Before Mr. Justice Tudball and Mr. Justice Ryves.

EMPEROR *v.* RAM DAYAL AND OTHERS. *.

Act No. XLV of 1860 (*Indian Penal Code*) *section* 306—*Abetment of suicide*—Sati.

Held that persons actively assisting a Hindu widow in becoming a *sati* are guilty of the offence of abetment of suicide as defined in section 306 of the Indian Penal Code.

THE facts of the case are fully set out in the judgements. Shortly they were as follows:—

One Ram Lal, Brahman, of village Jarauli, died early in the morning of the 27th of June, 1913. His widow expressed her intention to become *sati*. Her relations and neighbours tried to dissuade her, but she did not listen to them. They, thereupon, sent the chaukidar to the thana, 8 miles off, to warn the police of her intention. They, however, went on making preparations to take the body to the burning ground, which was two furlongs from the village. The police did not arrive in time, and the body was carried to the burning ground, the widow accompanying the bier. The accused prepared the funeral pyre, on which the widow sat with the head of her husband on her lap. She took off her ornaments and handed them over to one of the accused. She demanded *ghi*, which was given her and which she poured on herself and the pyre. She then asked for fire, but as to this the witnesses seem to have agreed to say that it was refused and that the pyre burst into flame of itself in answer to the prayers of the widow.

On these facts the Sessions Judge convicted five of the persons

* Criminal Appeal No. 531 of 1913 from an order of E. C. Allen, Sessions Judge of Mainpuri, dated the 17th of July, 1913.