Before Mr. Justice Tudball and Mr. Justice Sulaiman.

GULSHAN ALI (DEFENDANT) *v.* ZAKIR ALI (PLAINTIFF)*

1920
April, 16.

Act No. VII of 1889 (*Succession Certificate Act*), *sections* 4 *and* 6—*Assignment by heirs of a debt due to a deceased person—Suit by assignee to recover debt—Certificate necessary before assignee can obtain a decree.*

If the heir of a deceased person, to whom at his death money was due, assigns the debt to a third person, the assignee cannot realize the debt without obtaining a succession certificate under Act No. VII of 1889. A debt due to deceased person does not cease to be part of the effects of the deceased by reason of such assignment

Goswami Sri Raman Lalj v. *Hari Das* (1) not followed. *Allah Dad Khan* v. *Sant Ram* (2), *Rang Lal* v. *Annu Lal* (3) and *Radhika Prasad Bapudi* v. *The Secretary of State for India in Council* (4) referred to. *Karuppasami* v. *Pichu* (5) and *Mancharam Pranjivan* v. *Bai Mahali* (6) followed.

THE facts of this case are fully stated in the judgment of TUDBALL, J.

The Hon'ble Munshi *Narain Prasad Ashthana*, for the appellant.

The respondent was not reprsented.

TUDBALL, J.:—The suit out of which this appeal has arisen is one to recover a debt due on a simple mortgage, executed in favour of one Musammat Allah Jilai. The creditor died, and two persons, Musammat Said-un-nissa and Musammat Wahid-un-nissa, claiming to be her heirs, sold their rights to one Masit Ali, and the latter transferred his right to the plaintiff, Zakir Ali. The latter's suit was dismissed by the court of first instance on the simple ground that he had not produced a succession certificate. The lower appellate court has taken the opposite view and has remanded the case for trial on its merits.

The defendant appeals and the sole question is whether or not the plaintiff is bound to produce a succession certificate before he can receive a decree for the amount claimed. I should have had no difficulty in deciding this case, were it not for an expression of opinion by the two Judges of this Court who decided the case of *Goswami Sri Raman Lalji* v. *Hari Das* (1).

* First Appeal No. 132 of 1919, from an order of Lalta Prasad Jauhari, Subordiate Judge of Moradabed, dated the 8th of May, 1919.

(1) (1916) I. L. R., 38 All., 474.
(2) (1912) I. L. R., 35 All., 74.
(3) (1913) I. L. R., 36 All., 21.
(4) (1916) I. L. R., 38 All., 438.
(5) (1892) I. L. R., 15 Mad., 419.
(6) (1893) I. L. R., 18 Bom., 315.

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The point did not really arise for decision in that case, as was pointed out by SUNDAR LAL, J. The decree was a joint and several decree in favour of *A* and his wife. The wife died and *A* took out letters of administration. He then transferred the decree to Hari Das, i.e., his own rights and those of his wife. Hari Das applied for execution. The decree was a joint and several decree and as purchaser of *A's* rights alone, Hari Das was entitled to have it executed. WALSH, J., however, went into the point at length and held that it was not necessary for an assignee of a debt from the heir of a deceased creditor to produce a succession certificate, on the ground that he was not a person claiming to be entitled to the effects of a deceased person or to any part thereof, because from the date of the assignment the debt due to the deceased ceases to be part of the effects of the deceased. He held that the decision in *Allah Dad Khan* v. *Sant Ram* (1) was no longer law in view of the fact that it was not accepted by the Judges who decided the case of *Rang Lal* v. *Annu Lal* (2). SUNDAR LAL, J., remarked that it was not necessary to decide the point, though he was inclined to agree with WALSH, J., that the later ruling had overruled the earlier one.

This case was decided on the 13th of May, 1916. The attention of the learned Judges, as far as I can see from the report of the arguments, was not called to certain rulings of other High Courts to be found in *Karuppasami* v. *Pichu* (3) and *Mancharam Pranjivan* v. *Bai Mahali* (4), which take the opposite view, nor to the decision in *Radhika Prasad Bapudi* v. *The Secretary of State for India in Council* (5), which was decided on the 3rd of May, 1916, i.e., only ten days previously. The two former of these three cases take the opposite view to that adopted by WALSH, J. They were both quoted in the arguments put forward by the appellant in the third case which was decided by BANERJI and PIGGOTT, JJ. Attention was also called to the two cases of *Allah Dad Khan* v. *Sant Ram* (1) and *Rang Lal* v. *Annu Lal* (2). Yet the two learned Judges granted a succession certificate to an

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(2) (1913) I. L. R., 36 All., 21.
(3) (1892) I. L. R., 15 Mad., 419.
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assignee from an heir of a debt due to a deceased person. PIGGOTT, J., was a party to this decision as well as to the decision in *Rang Lal* v. *Annu Lal* (1), which in WALSH, J's opinion overruled the decision in *Allah Dad Khan* v. *Sant Ram* (2). BANERJI J., remarked:—" The only question which the Court had to decide was whether the applicant was the representative of the person to whom the debt was alleged to have been due," and in the result, holding him as an assignee from the heir to be the representative of the deceased, granted him the certificate. In this PIGGOTT, J, acquiesced. In *Rang Lal* v. *Annu Lal* (1) he distinguished that case from the one reported in *Karuppasami* v. *Pichu* (3). In the latter case, as in the case now before us, no certificate had been obtained by any one. In *Rang Lal* v. *Annu Lal* (1) the heir of the deceased had already obtained a certificate before she assigned the debt and the Judges held that no further certificate was in the circumstances necessary. They remarked :—"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 Bichitra Kuar. We do not believe that the Legislature in enacting Act No. VII of 1889 intended either to take away from 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." The learned Judges also distinguished this case from that of *Allah Dad Khan* v. *Sant Ram* (2) and pointed out that certain remarks made by the Judges who decided that case were unnecessary for the decision thereof and that they were unable to concur in the line of reasoning adopted, *i. e.*, they did not agree that the person to sue for the debt is the person to whom the certificate was granted and that the assignee of the person to whom the certificate was

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granted could not sue by reason of the wording of section 16 of the Act.

The three opinions expressed in these three cases may therefore, be briefly stated as follows. In *Allah Dad Khan* v. *Sant Ram* (1) it was held that if an heir obtain a certificate and then assign, the assignee cannot obtain a decree until he obtains a certificate. [This was mere *obiter* as it was unnecessary for the decision of the case, as PIGGOTT, J. points out]. In *Rang Lal* v. *Annu Lal* (2) the opposite was ruled and it was held that the assignee could sue without the cancellation of the first certificate and the obtaining of another.

In *Goswami Sri Raman Lalji* v. *Hari Das* (3) it was held [though this was also pure *obiter*] that if an heir assigns without obtaining a certificate it is quite unnecessary for the assignee to obtain one because he is not claiming any of the effects of the deceased.

In addition to these three cases we have that of *Radhika Prasad Bapudi* v. *Secretary of state for India in Council* (4) where PIGOTT, J., concurred in granting a succession certificate to an assignee from an heir. If WALSH J.'s opinion be correct, it was quite unnecessary to grant the assignee one, and any heir can defeat the fiscal demands of Government and destroy the protection granted by section 4 of the Act to debtors, merely by assigning the debt to a third party. It seems to me that the fallacy lies in assuming that once a debt has been assigned by an heir it ceases to be part of the deceased's effects. The learned Judges who decided *Karuppasami* v. *Pichu* (5) considered this very point. It is unnecessary to repeat the words of their judgment. Its reasoning is forcible, and I find it impossible to differ from the opinion expressed therein. The facts of that case are on all fours with the facts of the case now before us so far as this point is concerned. The Bombay High Court has placed the same interpretation on the law.

There are at least two decisions of our own Court which support this view of the law and it seems to me that the weight of authority is in favour of it. It results also in one of the

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(5) (1892) I. L. R., 15 Mad., 419.

objects of Act VII of 1889 being attained instead of being defeated.

I, therefore, hold that where the heir has not obtained a certificate under the Act and assigns the debt to another, the assignee is entitled to obtain a certificate and cannot be granted a decree until he has done so. If there are fifty debts and fifty assignees and fifty suits by them then there must be fifty certificates.

SULAIMAN, J.:—I fully concur in the judgment of my learned brother. The question of law that directly arises in this case is whether it is necessary for the assignee from the heirs of a deceased creditor to obtain a succession certificate before he can obtain a decree for recovery of his debt. The main object of the Succession Certificate Act, as shown by the preamble, is to facilitate the collection of debts on succession and afford protection to parties paying debts to representatives of deceased persons. And I cannot ignore the fact that the Act is also a fiscal measure, as it prescribes the payment of a duty before the debt can be recovered. As a fiscal Act has to be construed strictly, at the same time the construction should so far as possible be such as not to defeat the very objects of the Act. If debtors need protection when paying debts to the heirs of a deceased person, they require it all the more when they have to make payments to assignees of such heirs. There is no reason why the heirs by a mere assignment of their rights should be allowed to deprive the debtors of the protection which the Legislature intended that they should have. Similarly, if it was contemplated that a duty should be payable before debts of a deceased person can be recovered in a court of law it could never have been intended that the payment of such duty is to be evaded by an assignment of the debts to third parties. If one bears these considerations in mind, it is difficult to conceive on what principle the assignees of the heirs of a deceased person should be in a better position than the heirs themselves.

As to the actual language of section 4 of the Act, the expression "a person claiming to be entitled to the effects of the deceased person or any part thereof" is comprehensive enough to include a person whose claim to a part of the effects

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is based on a deed of assignment from the heirs of the deceased. And I can see no ground for putting a narrow construction on it, and limiting it to a person claiming as a personal representative of a deceased person. The debt due to the deceased would still be a part of his effects, though the right to recover it may pass from his heirs to their heirs or transferees. Section 6 of the Act also is wide enough to cover an application by a person who bases "the right in which he claims" the debt on an assignment from the heirs of the deceased person, and it would be difficult to reject his application on the mere ground that he is not the personal representative of the deceased.

The difficulty that there may have to be as many different certificates as there are assignments of different debts is, when closely examined, not a very serious difficulty at all. A transferee from an heir simply steps into the shoes of the heir so far as the debt transferred to him is concerned, and becomes a legal representative of the deceased. A deceased person may have several legal representatives just as much as he may have several heirs. Every such legal representative, knowing full well that he cannot without a succession certificate obtain a decree for the recovery of the debt to which he is entitled, would, if prudent, apply for grant of such certificate before he institutes his suit. To such a proceeding all other persons interested in the estate of the deceased would in all probability be made parties. The District Court would decide to whom the certificate is to be granted. The certificate-holder would then be the person to sue for the recovery of the debt for the benefit of all the persons interested, and may be personally liable to the latter if owing to his negligence the debt is not recovered.

In this view of the law the plaintiff cannot obtain a decree without producing a succession certificate. This plea, however, had not been raised in the written statement and was only urged at the time of the argument, and when the plaintiff applied for time to produce such a certificate the learned Munsif rejected his application on the ground that he ought to have obtained the certificate beforehand and ought to have filed it along with the plaint. There is no provision of law which requires that a certificate must be filed along with the plaint;

on the other hand, all that section 4 enjoins is that no decree should be passed until the necessary certificate has been produced. Under the circumstances it will be open to the plaintiff to produce the certificate before a decree is finally passed by the trial court.

BY THE COURT :—The order of the Court is as follows. The order of the court below is modified to this extent that we direct the court of first instance to order the plaintiff to produce a succession certificate within a reasonable time to be fixed (and if necessary, extended) by the court, and if he fails so to do, to dismiss the suit ; otherwise the suit shall be decided on its merits.

Costs of this appeal will abide the result of the suit.

Decree modified.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Sulaiman.

1920
April, 27.

KRISHNA BAI (PLAINTIFF) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT).*

Act No. I of 1894 *(Land Acquisition Act), sections* 23 *(2) and* 32*—Hindu widow —Position of widow under the law prevailing in Bikanir—Mode of calculating the* 15 *per cent. extra allowed for compulsory acquisition.*

A piece of land with some buildings and trees on it was taken up by Government under the provisions of the Land Acquisition Act, 1894. The land belonged to a Hindu widow, but evidence was given on her behalf that her husband's native country was Bikanir, and that according to his personal law his widow would take an absolute interest in the property left by him and not merely an ordinary Hindu widow's estate.

Held that the widow was entitled to be paid the whole of the price awarded for the land and not merely to have it invested for her and to receive the interest during her life-time.

Held also that the 15 per cent. which is to be added for compulsory acquisition was not to be calculated on the value of the land alone, but on the combined value of the land, buildings, and timber.

THE facts of this case are fully stated in the judgment of the Court.

Mr. *Muhammad Yusuf*, for the appellant.

Mr. *A. E. Ryves*, for the respondent.

BANERJI and SULAIMAN, JJ. :—This appeal arises out of an order passed by the District Judge of Cawnpore in a reference under section 18 of the Land Acquisition Act. A certain area of land approximating 9 acres has been acquired for the erection of a European Civil Hospital at Cawnpore. The Collector

* First Appeal No. 355 of 1917, from a decree of Austin Kendall, District Judge of Cawnpore, dated the 17th of May, 1917.