

discretion as to invite interference in revision by this Court. I dismiss this application.

Application dismissed.

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EMPEROR
v.
DHARAM
RAJ.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SHARIF-UN-NISSA BIBI (PETITIONER) v. MASUM ALI AND ANOTHER
(OPPOSITE PARTIES.)*

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February, 23.

Act No. II of 1889 (Succession Certificate Act), sections 18 and 19—Certificate of succession granted to one creditor for the whole of a debt due to himself and others—Decree obtained by certificate-holder for his share only of the debt—Remedy open to other creditors in respect of their proportionate shares.

Upon the death of a Muhammadan lady her claim for dower devolved upon (1) her husband to the extent of one-fourth, (2) her brother to the extent of one-fourth and (3) her daughter to the extent of one-half. The brother applied for a certificate of succession in respect of the whole of the dower debt, and this was granted to him. At the time of this application, the daughter was a minor, and notice of the application was served for her on her father, notwithstanding that he was the person who himself was liable for the payment of the dower debt. On obtaining the certificate, the brother sued for and obtained a decree for his one-quarter share. Thereupon the daughter applied to the court asking either that the certificate granted in favour of the brother should be revoked and a fresh certificate made out in her name, or, in the alternative, that her name should be associated with that of the brother in the same certificate to the extent of the half share claimed by her. The court rejected this application *in toto*.

Held, on appeal from this order, (1) that the appeal lay, the order being in effect one refusing to grant a certificate to the applicant, and (2) that in the circumstances of the case the proper order to pass was one revoking the certificate already granted to the extent of one-half and granting a certificate for one-half of the dower debt in favour of the applicant. *Ghafur Khan v. Kalandari Begam* (1) discussed.

THE facts of this case were as follows:—One Musammat Kifayat Fatima died, leaving as her heirs her daughter Sharif-un-nissa, her husband Qazi Masum Ali and her brother Husain Ali. The shares inherited by them were, respectively, one-half, one-fourth and one-fourth. A sum of Rs. 25,000 was alleged to have been due to Musammat Kifayat Fatima on account of her

*First Appeal No. 90 of 1919, from an order of A. H. deB. Hamilton, Additional Judge of Aligarh, dated, the 26th of April, 1919.

(1) (1910) I. L. R., 33 All., 327.

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dower. After her death Husain Ali applied for a succession certificate in respect of the dower. Sharif-un-nissa, who was a minor, was made a party to the proceedings, and the notice issued to her was accepted by her father, Qazi Masum Ali, no objection being raised on the score of his interest in the matter of the dower debt being adverse to that of Sharif-un-nissa. A certificate was granted to Husain Ali in respect of the whole of the dower debt, namely, Rs. 25,000. Husain Ali then brought a suit against Qazi Masum Ali for the recovery of his own share only of the dower debt and got a decree accordingly. Sharif-un-nissa then applied for either the revocation of the certificate which had been granted to Husain Ali and the granting of a certificate to her for her share of the dower debt, or, in the alternative, for the addition of her name to that of Husain Ali in the certificate which had been granted to him. The court was of opinion that there was no ground on which the certificate granted to Husain Ali could be revoked, and that the said certificate being extant, no fresh certificate could be granted. It was also of opinion that there was no provision of law by which the name of Sharif-un-nissa could now be inserted in the original certificate. It, therefore, dismissed the application of Sharif-un-nissa. From this order she appealed to the High Court.

Mr. *S. Agha Haidar*, for the respondent Husain Ali, took a preliminary objection that the order of the lower court being one refusing to revoke a certificate already granted, no appeal lay from such an order. Section 19 of the Succession Certificate Act was the only section which provided for appeals under that Act, and it did not provide for an appeal from an order refusing to revoke a certificate. There could be no appeal except as specified in this section; *Bhagwani v. Manni Lal* (1).

The Hon'ble *Munshi Narain Prasad Ashthana*, for the appellant, in reply to the preliminary objection, submitted that the order of the lower court involved not only a refusal to revoke the original certificate but also a refusal to grant a certificate to the appellant. It was, therefore, appealable.

(1) (1891) I. L. R., 13 All., 214.

[The appeal was then heard on the merits.]

The certificate which was granted to Husain Ali was obtained by fraud, inasmuch as the fact that Sharif-un-nissa was a minor was not properly brought to the notice of the court. At any rate the proceedings were seriously defective by reason of the fact that the notice issued to her was served on her father as her guardian. In respect of the dower debt the relation between Sharif-un-nissa and her father was that of creditor and debtor, and their interests were clearly antagonistic. The father, therefore, was not at all a proper guardian *ad litem* of the minor daughter in this case. As the proceedings were defective in substance, the certificate was revocable under section 18 (a). Further, Husain Ali having sued to recover his own one-fourth share alone and having obtained a decree therefor, the certificate standing in his name had practically exhausted itself and had become, *quâ* the balance, useless and inoperative. It was, therefore, fit to be revoked. The only debt which now existed being the appellant's half-share, namely, Rs. 12,500, a certificate for that amount should be granted to her. Moreover, there was nothing in the Act to prevent the court from amending the original certificate by inserting the name of the appellant in it.

Mr. S. Agha Haidar, for the respondent Husain Ali :--

There was no fraud or concealment in the proceedings relating to the grant of the original certificate. The notice which was issued to Sharif-un-nissa shows on the face of it that she was a minor; it cannot be said, therefore, that the fact of her minority was not brought to the notice of the court. Moreover, proceedings under the Succession Certificate Act are of the nature of summary proceedings, and the applicant therein is not in the position of a plaintiff in a regular suit whose duty it is to bring all the necessary parties properly before the court. In these proceedings the initiative is with the Court to direct notice to be served on any person to whom in the opinion of the Court, notice should be given. Section 7 of the Act makes this quite clear. The contention of the appellant that another certificate should now be granted in her name is met by the ruling in the Full Bench case of *Ghafur Khan v. Kalandari Begam* (1). The

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principle underlying the decision in that case is that a dower debt is a single entity and it cannot be broken into pieces, for the purposes of the Succession Certificate Act, for the benefit and convenience of the various persons interested in its realization. A certificate for the whole debt having once been granted to Husain Ali, no other certificate should be granted for the whole or any part of the debt. Further, there is no warrant in the Succession Certificate Act for inserting the appellant's name now in the certificate which was granted to Husain Ali. The decree obtained by Husain Ali for his share of the dower debt is under appeal, and that appeal is now pending in the High Court. Should this Court feel inclined to modify the certificate which was granted to Husain Ali, no alteration should be made in it such as might jeopardize his position as a respondent in that appeal. His certificate should, at all events, be allowed to stand to the extent of Rs. 6,250.

The Hon'ble Munshi *Narain Prasad Ashtana*, was not heard in reply.

PIGGOTT and WALSH, JJ. :—This is a first appeal from an order passed under the Succession Certificate Act. The first point taken is that the order complained of is not an order refusing a certificate, but is an order refusing to revoke a certificate, against which no appeal is provided by section 19 of Act VII of 1889. In our opinion the order is in effect one refusing to grant a certificate to Musammat Sharif-un-nissa, the applicant, and we are bound to entertain the appeal. On the merits the case seems a clear one, except for one difficulty which has greatly influenced the decision in the court below, namely, the principles laid down in the case of *Ghafur Khan v. Kalanduri Begam* (1) as to the granting of a succession certificate for the collection of the dower debt of a Muhammadan widow when her husband has died without satisfying her claim in respect of the same. The essential facts of this case are quite simple. The appellant before us is the daughter of Qazi Masum Ali by his wife, Musammat Kifayat Fatima. That lady died with her dower debt unpaid. Her heirs under the Muhammadan Law were her husband, to the extent of a one-fourth share, a brother

(1) (1910) I. L. R., 33 All., 327.

named Husain Ali to the extent of a one-fourth share, and her daughter, the appellant, in respect of the remaining half share. Husain Ali applied for a succession certificate and the court to which he applied, following the principles laid down in the ruling to which reference has already been made, compelled him to take out a succession certificate in respect of the entire amount of the dower debt, which was stated in his application at Rs. 25,000. On the strength of this certificate Husain Ali proceeded to institute a suit against Masum Ali, but in this suit he claimed only his own one-fourth share of the dower debt. He made no attempt to recover on behalf of, and for the benefit of, Musammat Sharif-un-nissa the half share in the debt to which that lady was entitled. We understand that Husain Ali has obtained a decree, but that this decree is still under appeal in this Court. Musammat Sharif-un-nissa thereupon applied to the court below asking either that the certificate granted in favour of Husain Ali should be revoked and a fresh certificate made out in her name, or, in the alternative, that her name should be associated with that of Husain Ali in the same certificate to the extent of the half share claimed by her. The court below has held that no adequate case is made out under the provisions of section 18 of the Succession Certificate Act (VII of 1889) for the revocation of the certificate granted to Husain Ali, and that, on the principles laid down by the Full Bench of this Court in the ruling already referred to, it is impossible to grant a certificate in any form which would be of any use to Musammat Sharif-un-nissa. The appeal before us is against the order of the court below rejecting her application *in toto*. The position arrived at is, in our opinion, an impossible one and calls for rectification by this Court. As matters now stand Musammat Sharif-un-nissa is absolutely precluded from instituting a suit for the enforcement of what, on the facts stated, seems to be a perfectly just claim. We think that the court below could have revoked the certificate granted to Husain Ali, or at least have revoked the same in part, on more than one ground. In the first place the proceedings which took place when Husain Ali obtained his certificate were seriously defective in substance within the meaning of clause (a) of section 18 of Act VII of 1889. Musammat Sharif-un-nissa

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was at the time a minor, and her father, whose interest in this matter was obviously opposed to hers, he being the debtor whose liability it was sought to enforce by means of the application, was allowed to accept service of notice on her behalf. We are not saying that Husain Ali himself was to blame for this, but there was this serious defect in the procedure adopted by the court. Over and above this, the certificate granted to Husain Ali has now become practically inoperative so far as Musammat Sharif-un-nissa's share in the debt is concerned, and the decree made in his favour by a competent court for the recovery of a fractional share only of the dower debt renders it proper and desirable that some further order should be passed enabling Musammat Sharif-un-nissa to claim her legal rights. The learned District Judge would probably have taken very much the same view, but he felt himself constrained by the decision of this Court in *Ghafur Khan v. Kalzanduri Begam* (1) to hold that he could only choose between one of two courses, namely, rejecting Musammat Sharif-un-nissa's application, or revoking altogether the certificate in favour of Husain Ali and granting a fresh certificate to Musammat Sharif-un-nissa for the recovery of the entire amount of the dower debt. The difficulties felt by the Judges of this Court in applying the terms of the Succession Certificate Act to the case of a debt of a peculiar nature like the dower debt of a Muhammadan widow are obvious enough from the judgment delivered in the case above referred to. Undoubtedly it is impossible in dealing with the matter under Succession Certificate Act to treat the dower debt as anything but a single debt due to the deceased woman, and the procedure laid down under the Act does not afford any suitable method for deciding conflicting claims as between the heirs of the deceased lady to specific shares in the debt claimed. We do not, therefore, desire to express any dissent from the principles laid down by the Full Bench of this Court, which indeed we are bound as a Divisional Bench to follow. At the same time it seems to us unnecessary to apply these principles beyond the original granting of the certificate. We are of opinion that if a certificate has once been granted in respect of the entire debt,

(1) (1910) I. L. R., 33 All., 327.

and it becomes apparent to the Court that circumstances have subsequently changed so as to bring into operation clause (d) or or (e), or both, of section 18 of Act VII of 1889, it is open to the court to pass orders having the effect of a partial revocation of the succession certificate once granted, or to modify the terms of that grant in such manner as the interests of justice may seem to require. It might be possible for us to treat Musammat Sharif-un-nissa's share in the dower debt as representing the only debt now remaining to be paid to the heirs of the deceased lady, but this would involve treating the decree passed in favour of Husain Ali as equivalent to complete realization of his share, which is not precisely the case, more particularly in view of the fact that an appeal is pending against the decree. Nor do we wish to pass any order which would throw difficulties in the way of Husain Ali's realizing his claim, presuming it to be a just one. We think, however, that it is competent to us under the terms of the Act to pass the following order.

We revoke the certificate granted in favour of Husain Ali to the extent of half of the sum specified in the said certificate, namely, to the extent of Rs. 12,500, and we direct that a certificate for the realization of this amount, as a debt alleged to be due from Masum Ali to Musammat Kifayat Fatima, be granted in favour of the appellant Musammat Sharif-un-nissa. The appellant is entitled to her costs of this appeal.

Order modified.

Before Sir Grimwood Meares, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

SHAHZADI BEGAM (PLAINTIFF). v. MAHBUB ALI SHAH AND OTHERS
(DEFENDANTS)*

Act No. VII of 1870 (Court Fees Act), section 7 (ii) ; schedule II, articles 17 (iii)—Court fee—Suit for a sum payable periodically, the reliefs claimed being, first, a declaration of plaintiff's title and, secondly, a specified amount of arrears.

Plaintiff sued for a declaration of her right and that of her descendants to receive a certain annuity, as also for arrears of the same. The reliefs prayed for were thus stated in the plaint:—(a) "It may be declared as against the defendants that the plaintiff and her descendants, generation after generation, are entitled to receive from the defendants and their representatives Rs. 100 per mensem, which is a charge on the property mentioned in Schedule A"; (b) "A decree awarding Rs. 1,800 on account of the monthly allowance at the

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