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ask the defendants to make a calculation for themselves to see whether those figures were correct or not. It is the duty of the court to enter correct figures in its decree, and if a defendant deposits the amount stated therein under section 17 of the Small Cause Courts Act, he must be deemed to have complied with the law. The decree drawn up by the court below was carelessly drawn up. It was incorrect in figures as well as in details, and it is impossible to say on the face of that decree that the defendants had not complied with the law. As a matter of fact the decree has since been amended on the 20th of December, 1919, and the figures have been altered. I, therefore, allow the revision and set aside the order of the court below. The defendants will be allowed two weeks from the date of the receipt of the record by the court below to deposit a sum of Rs. 336-12-3 *plus interest* from the 23rd of June, 1919, to the 26th of August, 1919. Intimation of the receipt of the record shall be given to the pleader for the defendants within twenty-four hours of its arrival. Costs of this application and all costs incurred by either party up to the present moment will be costs in the cause and will abide the result. Any sum already deposited, if any, will go to make up the sum of Rs. 336-12-3.

Order modified.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Lindsay.

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January, 25.

SAHIB RAM (DEFENDANT) *v.* MUSAMMAT GOVINDI (PLAINTIFF)*

Act No. VII of 1889 (*Succession Certificate Act*), *section* 4—*Act No. IX of* 1908 (*Indian Limitation Act*), *section* 18—*Suit against person wrongfully collecting debt due to estate of deceased person—No succession certificate necessary—Fraudulent concealment—Limitation.*

No succession certificate is necessary where what the plaintiff is claiming is not a debt due to a deceased person, but money which, having been due to the deceased, has been wrongfully appropriated after his death by a third party.

A mortgage was executed on the 18th of November, 1891, in favour of S, A and H. H died in 1892, and on the 30th of July, 1910, S and A brought a

*Second Appeal No. 649 of 1918 from a decree of E. E. P. Rose, Second Additional Judge of Aligarh, dated the 27th of February, 1918, confirming a decree of Shams-ud-din Khan, First Additional Subordinate Judge of Aligarh, dated the 22nd of June, 1916.

suit for sale. To this suit they impleaded as defendants H.'s widow G and an alleged adopted son B. They afterwards applied to be made plaintiffs, and this was done. This suit was dismissed on the 23rd of November, 1911, upon the ground that the whole of the mortgage debt had already been paid to S. Within three years of the dismissal of that suit G sued S. to recover from him one-half of the mortgage money paid to him as being the share due to the estate of her husband.

Held that section 18 of the Indian Limitation Act, 1908, applied and the suit was within time. The defendant had not only concealed from the plaintiff the fact of his having collected the mortgage debt, but had brought the suit of 1910, which must have been false to his knowledge, to cover his tracks.

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

Munshi *Panna Lal*, for the appellant.

Babu *Piari Lal Banerji*, for the respondent.

TUDBALL and LINDSAY, JJ.:—Second Appeals Nos. 649 and 650 of 1918 are between the same parties and arise out of the same suit. On the 18th of November, 1891, one Har Narain executed a mortgage deed for a sum of Rs. 900 in favour of three persons, Sahib Ram and his brother Ajai Ram and their cousin Har Prasad. On the 30th of July, 1910, Sahib Ram and Ajai Ram brought a suit for sale against the mortgagor on the basis of the deed. At that time Har Prasad was dead. He left a widow Govindi and there was one Brij Narain, the son of Ajai Ram, on whose behalf a claim was put forward by Sahib Ram that he was the adopted son of Har Prasad. Therefore, he and Musammat Govindi were made *pro formâ* defendants to the suit. She applied to be made a plaintiff claiming to be the heir of Har Prasad. Sahib Ram took no exception to this application, in fact, he agreed on the condition that she would pay "*half*" the costs of the suit. She agreed to do this and was made a plaintiff. An application was also made on behalf of Brij Narain to be made a plaintiff to the suit and he was made a plaintiff but without any condition as to the payment of costs. On the 23rd of November, 1911, the suit was dismissed on the ground that the whole of the debt had been paid to Sahib Ram. Those payments apparently were found to have been made in the years 1897 and 1903. Har Prasad had died in the year 1892, so these payments were made to Sahib Ram subsequent to the death of Har Prasad. On the 2nd of December, 1914, Musammat

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Govindi, respondent to the present appeals, brought this suit No. 318 of 1914 to recover from Sahib Ram Rs. 1,950, a half share of the money which he had recovered from the mortgagor Har Narain, plus Rs. 150. The plaintiff claimed that the cause of action had accrued to her from the date of the decision of the suit, when it had come to her knowledge that Sahib Ram had collected the money from the mortgagor. Sahib Ram raised four points in defence. He first of all pleaded that he had not received the money from the mortgagor. He next pleaded that the suit was barred by time. He then pleaded that the plaintiff was not entitled to more than a one-third share in the amount recovered ; and lastly, he pleaded that Musammat Govindi was not the heir, as Brij Narain was the adopted son of Har Prasad and in his presence she had no title.

During the pendency of the suit Musammat Govindi applied to the District Judge for a succession certificate to enable her to recover this sum of Rs. 1,950 from Sahib Ram as being a debt due to the estate of her husband. The District Judge granted her a succession certificate and she produced it in court. The court of first instance held against Sahib Ram on all points except one, i.e., as to the share to which Musammat Govindi was entitled. It held that she was entitled to one-third and not one-half of the sum recovered by Sahib Ram. Both parties appealed. Musammat Govindi urged on appeal that she was entitled to a one-half share. The defendant pleaded that she was not entitled to anything at all. Whilst the appeals were pending, an appeal was preferred in the succession certificate case on behalf of Brij Narain to the High Court and finally the succession certificate granted to Musammat Govindi was withdrawn. It appears that in the year 1894 Sahib Ram had as guardian of Brij Narain applied for a succession certificate in respect to other debts which were due to the estate of Har Prasad. After the decision of the High Court an application was made for extension of the certificate of 1894 in respect to a sum of Rs. 1,950 which was said to be due to the estate of the deceased Har Prasad under a decree in a suit No. 318 of 1914 by the Second Additional Subordinate Judge of Aligarh. Now this decree was the decree which was passed by the court of first instance in this very suit No. 318 of

1914 in favour of Govindi against Sahib Ram. On appeal the District Judge held that Musammat Govindi was entitled to a one-half share in the amount collected by Sahib Ram. He held that the suit was not time-barred, and that Brij Narain was not the adopted son of Har Prasad. He, therefore, decreed the plaintiff's claim in full and dismissed the appeal of Sahib Ram. Sahib Ram now comes to this Court. He practically presses all the same points again.

It is urged, firstly, that the succession certificate granted to Musammat Govindi having been withdrawn, she is no longer entitled to a decree against Sahib Ram. In our opinion section 4 of the Succession Certificate Act does not apply to the facts of the present case. That section says that "No court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or any part thereof, or proceed, on an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production by the person so claiming of a succession certificate," *etc.* In the present case Musammat Govindi is suing, not a debtor of the estate of her husband, but a person who has wrongfully collected debts due to that estate and is holding them as against her. The collection of the debts was made long after the death of Har Prasad. The money in Sahib Ram's hands is due to the heir of Har Prasad, but Sahib Ram in no sense can be said to have been a debtor to the estate of Har Prasad. Section 4 of the Succession Certificate Act was clearly adopted to protect a debtor when called upon to pay a debt due by him to a deceased person. Har Narain, the original mortgagor, if he had not paid off the debt, would have been a debtor such as is contemplated under section 4. Sahib Ram, in the circumstances of the present case, is no such debtor, and in our opinion Musammat Govindi had no necessity whatsoever to produce a succession certificate in this litigation. The decision of this Court in the matter of the succession certificate and relating to Brij Narain's alleged adoption is in no way final or binding between the parties. Section 25 of the Act is very clear indeed on this point.

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[The judgment next dealt with and disposed of the question of adoption.]

In regard to the question of limitation it is urged that limitation began to run as against Sahib Ram from the moment he collected the debt, that is, from the years 1897-1903, and the suit having been brought more than three years after the money was received by him is now barred by time. The plea comes very badly out of the mouth of Sahib Ram, who in the year 1910 instituted a suit against the original mortgagor to recover the mortgage money on the ground that it had not been paid. If ever a fact is clearly proved it is beyond doubt in the present case that Sahib Ram having collected the money, concealed that fact from Musammat Govindi, who was entitled to a share therein. Not only that, but he brought a suit (a suit which must have been false to his knowledge) to cover his tracks, and Musammat Govindi is fully justified in law in stating that it was not until the 23rd of November, 1911, that she was aware of the collection of the money by Sahib Ram. Section 18 of the Limitation Act clearly would apply to the facts of the present case. When Musammat Govindi applied to be made a plaintiff in the suit, Sahib Ram actually allowed her to be made a plaintiff and made her responsible for half the costs of the suit. The plaint was filed on the 2nd of December, 1914. It was within time because the 23rd of November, 1914, fell on a holiday and the courts did not re-open till the 2nd of December, 1914. The claim was, therefore, within three years of the 23rd of November, 1911, and is within time.

Finally, there remains the question of the share to which Musammat Govindi is entitled. We think the decision of the court below on this point is quite correct, especially in view of the fact that when Musammat Govindi was made a plaintiff in the suit of 1910 Sahib Ram allowed her to be made a plaintiff on condition that she would pay half of the costs of the litigation, thereby tacitly admitting that she was entitled to half of the amount collected. There is no force in this appeal. We, therefore, dismiss it with costs.

Appeal dismissed.