

THE  
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APPELLATE CIVIL.

*Before Mr. Justice Daniels and Mr. Justice King.*

KASUMARI DAS (PLAINTIFF) *v.* MAKKHU AND OTHERS  
(DEFENDANTS).\*

1926  
May, 14.

*Act No. VII of 1889 (Succession Certificate Act), section 4—  
Suit for redemption by legal representative of deceased  
mortgagor—Succession certificate not produced until  
after passing of decree.*

Where a succession certificate is necessary, it must be obtained at any rate before the court of first instance is ready to pronounce judgement. It has no retrospective effect, and therefore is of no avail to the plaintiff if it is obtained only when the suit in respect of which it is needed is in the stage of appeal. *Fateh Chand v. Muhammad Bakhsh* (1), followed.

THE facts of the case sufficiently appear from the judgement of the Court.

*Munshi Damodar Das*, for the appellant.

*Munshi Kailas Chandra Mital*, for the respondents.

DANIELS and KING, JJ. :—This is a second appeal in a suit for redemption brought by the legal representative of the deceased mortgagor, which suit has been

\* Second Appeal No. 1558 of 1923, from a decree of M. F. P. Herchenroder, District Judge of Saharanpur, dated the 3rd of August, 1923, confirming a decree of Shambhu Nath Dube, Subordinate Judge of Dehra Dun, dated the 23rd of May, 1922.

(1) (1894) I.L.R., 16 All., 269.

1926

KASUMARI  
DAS  
v.  
MAKRHU.

dismissed by both the courts below on the ground that up to the time when the decree was passed the plaintiff failed to obtain a succession certificate. The suit was brought without any succession certificate having been even applied for. Objection was taken and an issue framed whether the plaintiff could maintain the suit without obtaining the certificate. The trial court granted the plaintiff a fortnight within which to obtain the necessary certificate. He filed an application for a certificate in respect of half the debt, and this application was rejected. The trial court then dismissed the suit. The order rejecting the application for a certificate was taken in appeal to this Court and was held to have been properly passed. The learned Judges who decided the appeal allowed the plaintiff to apply for a fresh certificate on a proper application in respect of the whole debt. He did so apply and obtained a certificate which he filed in the appellate court. The learned District Judge has held that this certificate could not have retrospective effect and has supported his view by observations to this effect in the judgement of the Full Bench in *Fateh Chand v. Muhammad Bakhsh* (1). In that case also time was allowed to the party to obtain a certificate and he failed to obtain it within the time which was allowed. In the judgement of the Full Bench it is said that no subsequent production of the certificate could show that the decree of the Subordinate Judge was contrary to law. This observation applies exactly to the present case. It was held also in the Full Bench case that a succession certificate was necessary in respect of a mortgage-debt, and this point is not contested before us. The Subordinate Judge was, therefore, prohibited by section 4 of the Succession Certificate Act from passing any decree

(1) (1894) I.L.R., 16 All., 259.

in respect of the debt without the production of a succession certificate or one or other of the documents mentioned in clauses (i) to (v) of the section. The decree of the Subordinate Judge was, therefore, perfectly correct and the appeal to the court below was rightly dismissed. We dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Walsh and Mr. Justice Pullan.*

TAWASSUL HUSAIN (APPLICANT) *v.* ABRAR HUSAIN  
AND OTHERS (OPPOSITE PARTIES).\*

1926  
KASHMARI  
DAS  
v.  
MAKKHU

1926  
Jan., 1

*Act No. IV of 1912 (Indian Lunacy Act), section 62—Insanity—Application for inquisition—Necessity of medical certificate to support application.*

A person who comes before a court with an application for an inquisition in insanity must support his application with a valid medical certificate of insanity. *Muhammad Yaqub v. Nazir Ahmad* (1), followed.

THE facts of the case sufficiently appear from the judgement of the Court.

Pandit *Madan Mohan Nath Raina*, for the appellant.

Dr. *M. L. Agarwala* and Mr. *Zafar Mehdi*, for the respondents.

WALSH and PULLAN, JJ. :—We consider that the chief difficulty which has arisen out of these proceedings is accounted for by the reluctance of the courts below to face the facts before them and give a definite decision. *Musāmmat Izzat Fatma* is an old Muhammadan widow, who in the year 1923 executed a

\* First Appeal No. 209 of 1925, from an order of M. F. P. Herchenroder, District Judge of Cawnpore, dated the 4th of September, 1925.

(1) (1920) I.L.R., 42 All., 504.