

CIVIL JURISDICTION.

1887
June 12.*Before Mr. Justice Straight and Mr. Justice Mahmood.*

LACHMIN (PLAINTIFF) v. GANGA PRASAD AND ANOTHER (DEFENDANTS).*

Debt due to estate of deceased person—Suit by legal representative—Certificate for collection of debts—Act XXVII of 1860, s. 2.

It is not an imperative condition precedent to the institution of a suit by the legal representative of a deceased person for a debt due to his estate that such legal representative should first obtain a certificate under Act XXVII of 1860.

THIS was an application by the plaintiff in a suit, instituted in the Court of Small Causes at Mirzapur, for revision of the decree dismissing the suit. The plaintiff had sued certain persons for Rs. 260 due to the estate of her deceased husband, claiming as his legal representative. The Small Cause Court Judge dismissed the suit on the ground that the plaintiff was not in a position to maintain it, as she had not obtained a certificate under Act XXVII of 1860.

The plaintiff contended that it was not necessary that she should have obtained a certificate under Act XXVII of 1860 before she instituted the suit.

Lala Lalta Prasad, for the plaintiff.

The defendants did not appear.

The judgment of the Court (STRAIGHT, J. and MAHMOOD, J.) was delivered by

STRAIGHT, J.—We do not think that the Judge of the Small Cause Court was right in throwing out the plaintiff-applicant's suit on the ground that she had obtained no certificate under Act XXVII of 1860. She came into Court alleging herself to be the legal representative of her deceased husband Rai Chand, and to this allegation the defendants took no exception, their objection being confined to the one ground that she had no certificate. The word "compelled" in s. 2, Act XXVII of 1860, is not happily chosen, and at first sight appears to declare a general prohibition of the widest kind. But the qualifying paragraph at the end of the clause undoubtedly indicates that a suit to recover a debt due to a deceased person's estate, or a proceeding to enforce execution of a decree

* Application, No. 102 of 1882, for revision under s. 622 of Act X of 1877 of a decree of Babu Ram Kali Chaudhri, Judge of the Court of Small Causes at Mirzapur, dated the 24th November, 1881.

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obtained by such deceased person during his life, may, after his death, be instituted by his legal representative, without a certificate first obtained. If the Court is satisfied that the debt is being withheld from "vexatious," that is, unreasonable or merely dilatory, "motives," and not from any "*bonâ fide*" objection on the part of the debtor to the title of the person seeking recovery, it may decree the claim, absence of certificate notwithstanding. If on the other hand the Court considers that the debtor has grounds for "a reasonable doubt" as to the party entitled, it may refuse to issue any compulsory process to enforce payment,* until the plaintiff has obtained the requisite certificate. We therefore do not think that it is an imperative condition precedent to the institution of a suit by the legal representative of a deceased person for a debt due to his estate, that such legal representative should first obtain a certificate under Act XXVII of 1860. We accordingly allow the application for revision, and direct the Small Cause Court Judge to restore the case to his file, and, having regard to our preceding observations, to proceed to dispose of the case according to law.

Application allowed.

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APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

PHUL CHAND (DEFENDANT) v. LACHMI CHAND (PLAINTIFF).*

Hindu Law—Joint Hindu family—Debts contracted by Father as manager of family business—Sale of ancestral property in execution of decree against Father—Son's share.

N, a member of a joint Hindu family, consisting of himself, his wife, and his minor son, L, managed the joint family business, which was carried on under the style of "Atma Ram Anokhe Lal." As manager of such business he contracted certain debts, for which he was sued as the "proprietor" of the firm of "Atma Ram Anokhe Lal," and for which decrees were passed against him, in execution of which ancestral property of the family was sold. L, his minor son, sued to have such sale set aside, and to recover his share of such property, on the ground that such decrees had been passed against his father personally, and only his interest in such property passed by such sale. Held that, looking at the capacity in which N was sued, and the nature of the debts for which such decrees were given

* Second Appeal, No. 1409 of 1881, from a decree of M. S. Howell, Esq., Judge of Shâhjahânpur, dated the 9th September, 1881, reversing a decree of Maulvi Zain-ul-abdin, Subordinate Judge of Shâhjahânpur, dated the 13th December, 1880.