

## APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

DHARMA'YA SANGA'PPA (ORIGINAL PETITIONER), APPELLANT, v.  
SA'YA'NA MA'LA'PA AND OTHERS (ORIGINAL OPPONENTS), RESPONDENTS.\*

1895.

September 18.

*Succession Certificate Act (VII of 1889), Sec. 7, Cl. 1—Certificate—Court  
bound to decide the right to the certificate—Practice—Procedure.*

Under clause 3, section 7, of the Succession Certificate Act VII of 1889, the District Court must decide in a summary way an application for a succession certificate even if the question at issue between applicant and opponent be as to the *status* of the family to which deceased belonged.

APPEAL from the decision of W. H. Crowe, District Judge of Poona, in Miscellaneous Application No. 56 of 1893, under Act VII of 1889.

One Narsingaya Sangápa died at Páchora,\* in the Khándesh District, leaving a fixed deposit amounting to Rs. 1,768 in the Bank of Bombay at Poona within the jurisdiction of the District Court of Poona, and leaving a widow Sávitribái, a daughter-in-law Lakshmibái, a nephew named Sáyána Malápa and a brother named Dharmáya Sangápa.

Dharmáya Sangápa applied to the District Court of Poona under the Succession Certificate Act (VII of 1889), praying for a certificate to enable him to recover the sum of Rs. 1,768 from the Bank of Bombay, alleging that he and the deceased were members of an undivided family.

Sávitribái, Lakshmibái and Sáyána opposed this application, contending that the applicant and the deceased Narsingaya were not joint but separate and that the applicant had no claim whatever to the money deposited in the Bank.

The District Judge of Poona refused the application, recording the following judgment :—

"The question at issue is as to the *status* of the family. The evidence points to some sort of division, but without expressing any opinion on that point, and as the debt to be collected is merely a fixed deposit in the Bank of Bombay amounting to Rs. 1,768, I think it may safely be left there until one party or other proves their title to it in the ordinary way by suit in the Civil Court. I refuse the application."

\* Appeal, No. 151 of 1894.

1895.

DHARMĀYA  
SĀYANA.

From this decision the applicant preferred an appeal to the High Court.

*Shivrām Vithal Bhándárkar* for the appellant.

*Mahádeo B. Chaubal* for *Lakshmibái alias Achama*, respondent No. 3.

The following authorities were cited during argument:— Act VII of 1889, section 7, clause 3, section 20; *Bái Maháli v. Kálidás Fakirchand*<sup>(1)</sup>; *Kálidás Fakirchand v. Bái Maháli*<sup>(2)</sup>; *Dáve Liládhár Káshirám v. Bái Párvati*<sup>(3)</sup>; *Jamsedji Kávasji v. Motibái*<sup>(4)</sup>; *Umed Dullichand v. Bái Ujali*<sup>(5)</sup>; *Rupchand v. Jasoda*<sup>(6)</sup>; *Sivamma v. Subbamma*<sup>(7)</sup>; *Jagmohandás v. Allu Maria*<sup>(8)</sup>.

JARDINE, J.:—Act XXVII of 1860, section 3, has been interpreted in *Jamsedji Kávasji v. Motibái*<sup>(4)</sup> and *Umed Dullichand v. Bái Ujali*<sup>(5)</sup>. As interpretations of Act VII of 1889, section 7, we may refer to *Rupchand v. Jasoda*<sup>(6)</sup> and *Sivamma v. Subbamma*<sup>(7)</sup>. Although clause 3 of that section appears new as enactment, and in cases of difficulty and intricacy enables the Court to grant a certificate to the person having *prima facie* the best title thereto, clause 1 says “the Court shall proceed to decide in a summary manner the right to the certificate.” We think, therefore, that the District Judge erred in refusing the jurisdiction on the reasons he gives.

It has been urged that the order is justified under section 20 by the opponent *Lakshmibái*'s statement that her husband, now deceased, once got an order for a certificate under this Act and that he never applied for the certificate. We do not think section 20 applies here. Whether *Jagmohandás v. Allu Maria*<sup>(8)</sup> applies to the case is, in our opinion, a matter for the District Court to decide.

The Court sets aside the order and remands the cause to the District Court for a new order to be made. Costs to be costs in the cause.

*Order reversed and case remanded.*

(1) P. J., 1891, p. 13.

(2) I. L. R., 16 Bom., 712.

(3) I. L. R., 18 Bom., 608.

(4) 2 B. H. C. Rep., 375.

(5) P. J., 1885, p. 200.

(6) P. J., 1894, p. 345.

(7) I. L. R., 17 Mad., 477.

(8) I. L. R., 19 Bom., 338.