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No. 13, he has a right to all the water which actually forms part of that stream as soon as it becomes part, whether such water comes by ordinary natural means, as from springs or from the surface of the adjacent hills, or from rains, or is added by percolation from the artificial channel of the canal: and if the canal water has by percolation augmented the stream and became part of it, no distinction can be made beween the original natural stream and the accession to it (*Wood* v. *Waud*[1]).

Whatever rights the Act may give, it certainly does not entitle the canal authorities, as things now stand, to stop the flow to the defendant of the natural stream.

Though the prayer in the plaint is expressed in the widest terms, the real object (as we have already indicated) is to obtain an affirmation of the claim advanced by the canal authorities to stop under clause (*c*) of section 28 the supply of water to the defendant (who claims the same by virtue of his riparian rights arising out of his interest in Survey No. 13) in order to supply the legitimate demands of those entitled to receive water for their lands.

This claim is (in our opinion) misconceived and the decree must therefore be confirmed with costs.

Decree confirmed.

(1) (1849) 3 Ex. 748.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

BAI KASHI (ORIGINAL OPPONENT), APPELLANT, *v.* PARBHU KEVAL (ORIGINAL APPLICANT), RESPONDENT.*

1903. *August 20.*

Succession Certificate Act (VII of 1889)—Enquiry under the Act—Debts, existence of—Payment of money due into Court—Certificate in respect of the money so paid—Practice.

The Succession Certificate Act (VII of 1889) is intended for the protection of debtors, but this only means that where a debtor of a deceased person either

* First Appeal No, 51 of 1903 from order.

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voluntarily pays his debt to a person holding a certificate under the Act or is compelled by the decree of a Court to pay it to that person, he is lawfully discharged. There is nothing in the Act which either expressly or by necessary implication requires the Court granting a certificate to hold an enquiry into the existence of any debt alleged by the person applying to be due as a preliminary condition of the grant. The Court has merely to ascertain the representative title of the applicant for the certificate and not the existence or non-existence of the debt.

The fact that the amount of the debt to recover which a certificate is applied for is paid into Court does not extinguish the debt or affect the necessity of taking out the certificate under the Succession Certificate Act (VII of 1889).

APPEAL from an order passed by H. L. Hervey, District Judge of Surat, under the Succession Certificate Act (VII of 1889).

One Jivan Vardhman died on the 26th April, 1902, leaving behind him a son, Vajeram, and Bai Kashi, daughter of a predeceased son.

On the 5th June, 1902, Bai Kashi filed suit No. 106 of 1902 against one Husenbhai Ahmedbhai to recover from him Rs. 1,500, which she alleged were due to her. Husenbhai paid the money into Court.

On the 30th August, 1902, Vajeram obtained a certificate, under the Succession Certificate Act (VII of 1889), to collect Rs. 1,500, which he alleged were due to his father by the said Husenbhai Ahmedbhai, but before he could collect the amount he died.

Parbhu Kewal, the nephew of Jivan Vardhman, then applied, on the 24th September, 1902, for a certificate to collect the Rs. 1,500 from Husenbhai, which formed the subject of litigation in suit 106 of 1902, and which were already paid by the debtor into Court. This application was opposed by Bai Kashi on the ground that the debt of Rs. 1,500, which the applicant sought to recover, was not due to the estate of Jivan Vardhman but to Bai Kashi herself.

On the 30th December, 1902, the District Judge granted a certificate under the Succession Certificate Act (VII of 1889) to the applicant on the ground that under Hindu Law he was the nearest heir to his uncle Jivan Vardhman.

The opponent, Bai Kashi, appealed to the High Court.

M. N. Mehta for the appellant:—A regular suit (No. 106 of 1902) is already pending, in which the conflicting claims of the

deceased and the appellant will be decided. Till then the lower Court ought to have stayed its hands. It ought at least to have taken *primâ facie* evidence as to the existence of the debt.

The debtor having paid the money into Court in that suit, there is no debt now existing in respect of which the certificate could be granted. If the certificate is granted, the debtor will be harassed with another suit.

Manubhai Nanabhai for the respondent:—The appellant has no *locus standi*. She does not herself claim the certificate. Her claim is adverse to the deceased himself and cannot be affected by these proceedings. The regular suit has nothing to do with this case. The debt is not extinguished by the deposit, and the certificate will be ultimately necessary.

If the certificate is now cancelled, the deceased would not be represented in the regular suit, and the decision therein will not bind the estate. This will expose the debtor to another suit at the instance of the rightful representative.

No inquiry as to the existence of the debts is necessary or even permissible; otherwise the proceedings would be interminable and the result would be fruitless, as it will affect no one. The scope of the inquiry is defined by section 7 of the Succession Certificate Act (VII of 1889); and the only question to be decided is as to who, out of the several claimants, is the most proper representative.

This Court cannot order that certificate should be given to no one. The only jurisdiction in appeal under section 19 of the Act is to prefer the claim of one as against the other claimant. Here there is only one claimant, and so this Court cannot cancel the present certificate.

CHANDAVARKAR, J.:—In my opinion there is no substance in either of the grounds which have been urged by Mr. Markand Mehta in support of this appeal.

There is no dispute as to the facts so far as they are necessary for the decision. One Jivan Vardhman died on the 26th April, 1902, leaving a son, Vajeram, and Bai Kashi, daughter of a predeceased son. Vajeram obtained a certificate under the Succession Certificate Act to enable him to collect the debts due to his deceased father, but before he could collect them he died. The

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respondent in this appeal having thereupon applied to the District Court for a certificate under the Succession Certificate Act to enable him to realise a debt of Rs. 1,500 due to the deceased Jivan's estate from one Husenbhai Ahmadbhai, that Court has granted it holding that the respondent is, under the Hindu Law, the nearest heir to the deceased Jivan Vardhman, but the grant is objected to before us on two grounds.

In the first place it is urged that the District Court ought not to have granted the certificate without going into the question and deciding whether the debt of Rs. 1,500 said to be due from Husenbhai is a debt due to the estate of the deceased. I know of no law or authority which requires a Court to find whether the debts alleged to be due to the estate of a deceased person are really due or not as a preliminary condition of the grant of a certificate under the Succession Certificate Act. That Act is indeed intended for the protection of debtors, but that only means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate under the Act or is compelled by the decree of a Court to pay it to that person, he is lawfully discharged. There is nothing in the Act which either expressly or by necessary implication requires the Court granting a certificate to hold an enquiry into the existence of any debt alleged by the person applying to be due as a preliminary condition of the grant. Such an enquiry might make a proceeding under the Act something in the nature of a roving commission, whereas all enquiry under the Act is intended by the Legislature to be summary, as held in *Gulabchand* v. *Moti*[1]. All that a Court has to do under the Act is to ascertain the right of a person to a certificate apart from the question of the existence or non-existence of the debts in respect of which he applies: see section 7, clause (2), of the Act. Supposing the Court does hold an enquiry into the existence of the debts and comes to a conclusion one way or the other as to any specific debt, what is the use of such an enquiry and finding? How does the Court's finding protect the debtor at all? In spite of it he may still refuse to pay contending that there is no debt and the holder of the certificate must in that case sue him and prove the existence of the debt.

(1) (1900) 25 Bom. 523.

In this particular case the debt is alleged by Bai Kashi (the appellant) to be due to her and not to the deceased Jiwan Vardhman, and it was urged that it was on that account necessary for the District Court to decide the question to whom the debt was due for the debtor's protection before granting the certificate. The appellant's objection, not being one to the right of the respondent to claim a certificate as the heir of the deceased, cannot be entertained in this proceeding. But how, again, would a decision by the Court on that question help or protect the debtor? If on the strength of the Court's finding that the debt was due to the deceased and not to Bai Kashi he pays the money to the holder of the certificate, it would be competent to Bai Kashi to sue him and prove that the debt was due to her; and if she proved that, the debtor's defence that he had paid it to the certificate-holder could not protect him, because the protection afforded by the Act is in respect of debts which are due to the estate of the deceased and not those due to third parties.

The second ground urged is that there is no debt in respect of which a certificate could be granted because the debtor has already produced Rs. 1,500 in Court in a suit which is said to be pending and to which, it is alleged, the debtor himself is a party. But the mere fact that a debtor produces money in Court cannot extinguish the debt. A decree in the suit holding that the debt is due to the estate of the deceased Jiwan cannot be a protection to the debtor, for any other person claiming to be the heir of the deceased may still sue the debtor. Hence it is that for the protection of debtors the Legislature has stepped in and provided that it is only a certificate under the Succession Certificate Act that can absolve the debtor from liability. After he has paid it to the holder of a certificate the question becomes one purely between such holder and any other person claiming to be the rightful heir of the deceased.

I would confirm the order. Cross-objections overruled. No order as to costs.

ASTON, J.—Parbhu Keval, respondent, applied to the District Court, Surat, for a succession certificate under Act VII of 1889 claiming to be the nearest heir to his deceased uncle Jivandas Vardhman. The only debt specified in the application alleged to

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be due to Jivandas Vardhman is a debt of Rs. 1,500 alleged to be due by one Husanbhai Ahmedbhai.

The application was opposed by Bai Kashi on the ground that she claimed the debt in question to be due to herself and not to the estate of Jivandas Vardhman. It appears that Bai Kashi had already instituted a regular Suit No. 106 of 1902 against Parbhu Keval, present respondent, and against Husanbhai Ahmedbhai aforesaid.

In that suit she claimed to recover from the latter this very debt of Rs. 1,500 as a debt she alleged to be due to herself from the said Husanbhai. The latter pleaded that the debt was due by him to either the plaintiff Bai Kashi or to Parbhu Keval, the 1st defendant in Kashi's suit, and he paid the Rs. 1,500 into Court for payment to Bai Kashi or to Parbhu Keval as the Court might decide.

The question whether this very debt is due to the estate of Jivandas Vardhman or to Bai Kashi in her own right was thus a matter pending adjudication in a regular suit to which Bai Kashi and Parbhu Keval, the applicant and opponent in the succession certificate proceedings, are parties. It was contended before us that under these circumstances the District Judge would have exercised a sounder discretion if, in the present proceedings in which Parbhu Keval asked for a succession certificate to Jiwandas Vardhman, he had at least recorded *primâ facie* evidence that this debt is due to the estate of Jiwandas, or else had postponed the issue of the certificate till the Suit No. 106 of 1902 is decided. These contentions were pressed because Mr. Manubhai for the respondent Parbhu Keval stated at the hearing that his client intended to sue for the alleged debt in question even if it be decided in regular Suit 106 of 1902 that the debt is due to Bai Kashi and not to the estate of Jiwandas Vardhman, deceased, because, as Mr. Manubhai put it, Bai Kashi is suing in her own right in Suit 106 of 1902 and not as representative of Jiwandas Vardhman. I do not follow the reasoning of Mr. Manubhai, but I think that the answer to the contentions of Mr. Mehta for the appellant Bai Kashi is that in proceedings under Act VII of 1889 the Court is concerned with the question whether the applicant proves his representative title and not with the

question whether the debts alleged to be due are due to the deceased person whom the applicant claims to represent.

The respondent has established his representative title and a succession certificate may quite possibly be put to a legitimate use by him even in the Suit 106 of 1902 if it be decided in that regular suit that Bai Kashi, plaintiff in that regular suit, is not entitled to the debt of Rs. 1,500 which present respondent claims to be a debt due to Jiwandas Vardhman, deceased.

If the respondent should seek to make use of the certificate in order to harass Bai Kashi with unnecessary litigation, that could be a matter for the consideration of any Court in which further litigation about this particular claim to the Rs. 1,500 might be undertaken, but this argument cannot be entertained as a reason for refusing the certificate when respondent has established his representative title. The issue of the certificate in no way affects the question whether the debt of Rs. 1,500 alleged in the application to be due to the estate of Jiwandas is or is not due to that estate.

I would therefore confirm the order of the lower Court and dismiss this appeal. The cross-objection is overruled. No order as to costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Jacob.

PANDURANG BALAJI BAGAVE (ORIGINAL PLAINTIFF), APPELLANT, *v.* KRISHNAJI GOVIND PARAB AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1903. *August* 25.

Civil Procedure Code (Act XIV of 1882), section 266 (c)—House—Sale in execution—Exemption from liability to attachment or sale—Facts to be taken to exist which are proved.

A certain house was sold in execution of a decree. Subsequently the purchaser having brought a suit to recover possession of the house, the defendant, that is, the judgment-debtor under the decree, contended that

* Appeal No. 8 of 1903 from order.