

(1868) 12 CAL CK 0022

In the Calcutta High Court

Case No : Miscellaneous Regular Appeal No. 414 of 1868

In Re: Rani Raisunnissa Begum

Date of Decision : 16-12-1868

Acts Referred:

Citation : (1868) 12 CAL CK 0022

Judgement

Loch, J.—We think the reasons given by the Court below, refusing to grant the application for a certificate under Act XXVII of 1860 are wrong. A certificate granted under Act XL of 1858 to administer to an estate, though it gives the right to the administrator to collect the debts due to the estate, is not sufficient to enable the party to whom the certificate is granted to enforce that right in Court, if the debtor objects to pay the debt, for without a certificate under Act XXVII of 1860 no debtor of any deceased person can be compelled in any Court to pay his debt to any person, claiming to be entitled to the effects of any deceased person or any part thereof, except on the production of a certificate to be obtained under the Act. The opposite party claimed under a will. Had that will been proved, we might have thought it unnecessary to order further enquiries in the case, because under that will the opposite party will be entitled to collect the debts due to the estate. But as this Court has held in *Feda Hossein v. Rani Khajurunissa* (9 W.R., 459) that the Judge has not pronounced in favour of the will or against it, we think that the Judge was bound in the present application to proceed, as required by Section 3* of the Act, and after such enquiries as may be necessary to determine which of the parties, i.e., claimants, was entitled to a certificate under that Act? It has been said that as the applicant is only entitled to a small portion, if entitled to anything, she is not entitled to a certificate, and that as the respondent has the greater interest, the certificate ought to be given to her. It has also been said that, as the petitioner was childless at the death of her husband, she is not entitled, under the Shia law, to succeed. With regard to the first objection, it seems to us that if the petitioner is entitled to a share, the mere fact of her having a small share will not debar her from getting a certificate entitling her to collect according to the share due to her; and with regard to the other point we have referred to *Macnaghten and Baillie*, and find nothing in

support of the statement that a childless widow is not entitled to succeed to her husband's estate.

2. We, therefore, reverse the order of the lower Court, and remand the case to the Judge to be tried in the usual manner, and to determine whether the petitioner is or is not entitled to receive a certificate. The parties will pay their own costs.

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Certificate, how to be obtained.

Sec. 3:--The District Court within the jurisdiction of which the deceased shall have ordinarily resided at the time of his death, or if at that time he had no fixed place of residence, then within the jurisdiction of which any part of the property of the deceased may be found, shall have authority to grant a certificate under this Act. The applicant in this petition shall set forth his title. The Court shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and upon the appointed day or as soon after as may be convenient, shall determine the right to the certificate and grant the same accordingly.