

(1917) 11 AHC CK 0002
In the Allahabad High Court

Musammat Narain Dei

APPELLANT

Vs

Musammat Parmeshwari and Others

RESPONDENT

Date of Decision : 07-11-1917

Acts Referred:

Succession Certificate Act, 1889 — Section 7(3)

Citation : 42 Ind. Cas. 941

Hon'ble Judges : Henry Richards, C.J.; P. C. Banerji, J

Bench : Division Bench

Judgement

1. This appeal arises out, of an order of the District Judge rejecting the application of the appellant for a certificate to collect debts under Act VII of 1889. Umrao Singh was the husband of the appellant. He died leaving (1) his widow, (2) the wife of a pre-deceased son, and (3) certain reversioners him surviving. The application of the widow was opposed by the reversioners and the daughter-in-law. An order was made by Mr. Allen, granting a certificate conditional upon the widow giving security to the extent of the debts covered by the certificate which was asked for. There appears to have been some allegation by the opposite party that the debts due to the deceased were greater than those mentioned in the application. The lady expressed her inability to give security and eventually her application was rejected. The learned District Judge who finally rejected her application seems to have been of opinion that the first order made by Mr. Allen was u/s 7, Clause (3), of the Succession Certificate Act and that accordingly the Court had no option but to require security to be given. In the present case it is clear that the widow was the person entitled to a succession certificate, and that the order of Mr. Allen was not made u/s 7, Clause (3). Section 9 deals with the powers of the Court as to directing security. It provides that the District Judge shall, in any case in which he proposes to proceed u/s 7, Clause (3), or Clause (4), require that security must be given by the person to whom the certificate is granted. The Court has also a discretion in any other case to require security to be given. The real question which we have to decide in the present case is whether or not, when a widow is admittedly

entitled to the certificate and all the moneys covered by the succession certificate are assets of her deceased husband, she ought to be called upon to give security. It is not alleged in the present case that there are any exceptional circumstances. There is the mere fact that she is the widow and a purdahnashin lady. It seems to us quite clear that if the deceased had died leaving a sum of money equal to the debts in his house, or if the widow "had been successful in collecting a similar amount after the death of her husband, the reversioners would not be listened to, if they came into Court asking that the widow's rights as a Hindu widow should be restrained in any way for the benefit and protection of the reversioners on the mere allegation that she might waste the corpus. If this view be correct, it seems to us that there is no reason why the reversioners should get exactly the same relief by compelling the widow to find security as a condition precedent to getting a certificate to collect debts. We do not say that there may not, in some cases, be special circumstances which might justify the Court in directing security to be given even in the case of a Hindu widow. We allow the appeal, set aside the order of the Court below and direct that the certificate do issue to the appellant. The appellant must have her costs to be paid by the respondents in all Courts.