
(1912) 11 AHC CK 0028
In the Allahabad High Court

Sant Ram

APPELLANT

Vs

Allah Dad Khan and Others
Sant Ram Vs Wahid-Un-Nissa and Others

RESPONDENT

Date of Decision : 19-11-1912

Acts Referred:

Succession Certificate Act, 1889 — Section 4

Citation : (1913) ILR (All) 74

Hon'ble Judges : Harry Griffin, J;Chamier, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Harry Griffin and Chamier, JJ.—This was a suit upon a mortgage made in favour of one Bahadur Khan by two persons who are now represented by the appellants and others. Bahadur Khan died leaving a son, Farzand Ali, and other heirs. Farzand Ali applied for a succession certificate in respect of several debts due to his father. Some of the other heirs stated that they had relinquished their rights in his favour, and a certificate was issued to Farzand Ali, who some years later assigned the mortgage debt together with his right to sue for the same to the respondent, Sant Ram. It is, on the strength of that assignment, that the present suit was brought. The claim was resisted upon several grounds, one of which was that Farzand Ali was not competent to transfer to another the right conferred upon him by the succession certificate to sue for the recovery of the debt. The court below decided this and other questions against the appellants. Hence this appeal.

2. Apart from the provisions of the Succession Certificate Act, Farzand Ali, as one of the heirs of Bahadur Khan, could have sued upon the mortgage, making as defendants the heirs of Bahadur Khan, who declined to join as plaintiffs. He could also have assigned his interest in the mortgage to the respondent, Sant Ram. Indeed, the assignment in favour of Sant Ram may be regarded as having transferred to Sant Ram all Farzand Ali's rights under the mortgage, although

the assignment purports to have been made by Farzand Ali as holder of the succession certificate. But Section 4 of the Succession Certificate Act provides that no court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of a deceased person or to any part thereof, except upon the production by the person so claiming of a certificate granted under that Act or of one or other of certain other documents, which admittedly have not been produced in this case. It has been held by this Court in many cases, which we are bound to follow, that a debt secured by a simple mortgage is a debt within the meaning of the provision just quoted. A certificate under the Succession Certificate Act has been produced, but it is in favour of Farzand Ali. The question is whether such a certificate is sufficient. The Act does not in so many words say that the certificate must be one in favour of the plaintiff, but we think that that is the meaning of the provision. The declared object of the Act is to facilitate the collection of debts on successions and to afford protection to parties paying debts to the representatives of deceased persons. Section 16 of the Act protects a debtor of a deceased person who pays the debt in good faith to the person to whom the certificate was granted. An assignee of the person to whom the certificate was granted does not appear to come within the section. From this it would appear that the person to sue for the debt is the person to whom the certificate was granted. Notwithstanding the preamble to the Act, one of the objects of the Act seems to have been to prevent people from evading payment of the duty payable on certificates issued under Act XXVII of 1860. If that had been the sole object of the Legislature, there would have been much to say for the view taken by the court below. But the main object must be taken to be that stated in the preamble. The Act is designed to enable debtors to know with certainty the person to whom they can safely pay a debt due to a deceased person. If we were to hold that any person may sue for the recovery of a debt due to a deceased person provided that he produces a certificate having the debt specified in it, the debtor would have to trace the title of the plaintiff and we should re-introduce the confusion which the Act was designed to remove. If the plaintiff relies upon a grant of probate or letters of administration, he must show that the grant was made to him, and we see no reason why it should be otherwise in the case of a succession certificate. The result is that the plaintiff, in our opinion, was not entitled to maintain this suit.

3. It was suggested that we might adjourn the case in order that the plaintiff might apply for a certificate. We cannot allow this, as the plaintiff cannot be permitted to convert a suit by him as assignee of Farzand Ali into a suit by him as holder of a certificate authorizing him to collect debts due to Bahadur Khan. The appeal is allowed and the suit is dismissed with costs.