

PART B-SUCCESSION CERTIFICATES.

1. The following instructions are issued regarding the grant of certificates for the collection of debts on succession which previously were dealt with under the Succession Certificate Act, 1889. The provisions of that Act are now incorporated in the Indian Succession Act, 1925.

Introductory.

2. All Subordinate Judges of the first and second class have been invested with the functions of a District Court for the purposes of granting succession certificates by Punjab Government Notification No. 781, dated 15th July 1914, which continues to be in force—(vide General Clauses Act, 1897, section 24).

Sub-Judges empowered to grant certificate.

Application under Part X of the Indian Succession Act, 1925, will usually be dealt with by Subordinate Judges and appeals from their orders granting, refusing or revoking certificates will lie to the District Judge. When a District Judge finds it necessary to deal with any application under the Act as an original Court the appeal will lie to the High Court under section 384, sub-section (1) of the Act.

Form of appeal.

3. Turning to the procedure prescribed by the Act the following points should be borne in mind—

- (a) A Civil Court is prohibited in all cases from passing or executing a decree in a suit by or upon the application of a person claiming to be entitled to recover a debt or decree in favour of any person deceased, without the production of a probate or letters of administration, or a succession certificate granted under the Succession Certificate Act of 1889, or the Indian Succession Act of 1925, or a certificate granted under the Administrator-General, Act, III of 1913. In this connection attention is also drawn to the provisions of Order VII, Rule 4, of the Code of Civil Procedure, as to plaintiff's suing in a representative character. The grant of a probate, letters of administration or a succession certificate is not, however, an essential condition precedent to the institution of a suit, but

Succession Certificate, etc. should be obtained by the heir for recovery of debts due to a deceased person.

the requisite probate, letters or certificate must be produced before the passing of a decree.

In the case of a Joint Hindu family when property passes by survivorship, no succession certificate is necessary (cf., 20 P.R., 1901).

Definition of debt.

(b) The word "debt" as used in section 214, sub-section (1), is defined to include any debt except *rent, revenue* or profits payable in respect of land used for agricultural purposes. The prohibition imposed on the Civil Courts does not therefore extend to Revenue Courts when dealing with suits under these heads (section 214, sub-section (2)).

Certificate for a fraction of the debt.

There was a difference of opinion amongst the High Courts as to whether a certificate could be granted with respect to a fraction of a debt but now by Act XIV of 1928 grant of such a certificate is made legal.

Application for a Succession Certificate to be signed and verified. Its contents.

(c) The particulars to be specified in an application for a certificate are specified in section 372, and every application requires to be signed and verified in accordance with the provisions of the Code of Civil Procedure applicable to plaints; and sub-section (2) of this section prescribes the manner of dealing with allegations contained in the application which may be found to be false. As the application now partakes of the nature of a verified plaint, great care should be taken to insist on its being properly and concisely drawn up, and that it is complete in regard to the matters required by section 372;

Manner of inquiry and security to be taken from the grantee of certificate.

(d) The proceedings in hearing applications may be summary to some extent, in that intricate questions of law and fact need not be gone into the person having the best title *prima facie* being granted the certificate. At the same time, the court is not relieved of the obligation to hear the parties and take sufficient evidence to enable it to decide who is the person best

entitled to a certificate, as well as all other points which may ordinarily be necessary to enable it to dispose of the petition. If the summary power conferred by section 373 sub-section (3), is followed in any case, the court is bound to demand security from the person to whom it proposes to grant the certificate as a condition precedent to such grant;

- (e) Persons objecting to an application by another person can be heard without themselves becoming applicants, but every person opposing an application who claims a certificate for himself, must file a proper application in the manner prescribed by section 372. Every such application must be disposed of by a separate order ; but the question of right to a certificate among several applicants will generally be most conveniently heard in a single proceeding between the contending parties;
- (f) In deciding which of several applicants is entitled to a certificate, it is open to the court to consider the extent of interest and the *fitness in other respects* of the several applicants;
- (g) The debts and securities in respect of which a certificate is applied for must be detailed at length in the application and also in the certificate and the certificate must be limited in terms to the debts and securities specified in the application and also in the certificate— [section 372, sub-section (1), clause (f) and section (374)] At the same time, the court is empowered (by section 376 to extend the certificate, on the application of the holder thereof to any debt or security not originally specified therein, and otherwise to amend the certificate (section 378).

Objection to application. Procedure in case of several claimants for a certificate.

Points to be considered in deciding the cases of rival claimants.

Application and certificate to contain details of debts and securities. Extension and amendment of the certificate.

4. The particulars required in the certificate are specified in section 374, and the forms are prescribed by section 377, and will be found in schedule VIII. Courts should be careful to see that certificates are properly framed and that all necessary particulars and powers are

Form and contents of certificate.

duly inserted in the first instance, so as to obviate the necessity for subsequent amendment of the certificate.

Requisition of security form grant of certificate.

5. It has already been pointed out that, in any case in which a court proposes to grant a certificate upon summary inquiry, without determining any intricate question of law or fact which may be involved, security must be taken under section 375, sub-section (1), from the person to whom it is proposed to grant a certificate before it is granted. The same remark applies to action under section 373, sub-section 4, of the Act, namely, when there are more applicants than one for a certificate, and more than one of them are found to be interested in the estate. It is, however, open to the court to demand security in any other case.

Court-fees in cash on application for a certificate or for its extension.

6. Attention is drawn to the provision as to court-fees, contained in section 379 of the Indian Succession Act, 1925. Every application for a certificate or for extension of a certificate must be accompanied by a deposit (to be placed in the treasury, of a sum equal to the court-fee payable under the Court-fees Act, viz., 2 *per centum* on the value of the debts and 3 *per centum* on debts to which the certificate is extended under section 376 of the Act— (*vide* Article 2, Schedule 1, of the Court fees Act, 1870).

Amount to be calculated according to scale in force on date of application.

The amount of court-fee should be calculated according to the law in force on the date of the application, and it is not affected by any subsequent change in the law.

Court-fee stamp to be purchased if application allowed. Refund for deposit or surplus money.

If the application is allowed, the money is to be expended, under the direction of the court, in the purchase of the court-fee stamps required for the certificate when granted. In cases in which the application is rejected, or where an application is allowed, if the sum deposited exceeds the sum eventually required for court-fees, the deposit or surplus deposit (as the case may be) must be refunded. The application itself is of course only required to bear the usual court-fee prescribed for such applications.

No refund after grant of application.

In connection with the question of refund of deposits the attention of all Subordinate Judges exercising Powers under the Act is drawn to the ruling published as I.L.R. 21

Mad. 241. Once an application for a succession certificate is granted the sum deposited by the applicant cannot be refunded on the ground that he is unable to furnish security or that the necessity for obtaining a certificate has ceased.

The attention of all Commissioners and Deputy Commissioners in the Punjab and the Deputy Commissioner, Delhi, has been drawn to the instructions contained in stamps. this rule by the Financial Commissioners, Punjab, and the Chief Commissioner, Delhi, and on the suggestion of the Hon'ble Judges they have issued instructions to all Treasury and Sub-Treasury Officers that in all succession certificate cases the *ex-officio* vendor should issue court-fee stamps of the required denomination on production of a "Revenue Deposit Repayment Voucher" from the court concerned.

The procedure to be adopted is that the amount when deposited by the applicant should be credited into the Treasury as "Revenue Deposit" and re-drawn on "Revenue Deposit Repayment Vouchers" for the purchase of court-fee stamps required for the certificate when granted. Court-fee stamps should be purchased direct from the Officer-in-charge of the Treasury or the nearest Sub-Treasury in the name of the applicant, payment being made by "Revenue Deposit Repayment Voucher" drawn in favour of the Officer-in-charge, and the Officer-in-charge should, in turn, credit the amount to Government by transfer credit to the appropriate head of account, viz., "IX—Stamps—B—Judicial—Sale of Stamps"

7. A succession certificate under Part X of the Act takes effect throughout India. (Section 380).

8. Provision is made in section 383 for revoking certificates on certain grounds which are specified.

9. Under section 215, a grant of Probate or Letters of Administration, supersedes a certificate granted under Part X of the Indian Succession Act, 1925, or under the Succession Certificate Act, 1889.

Decision in
Succession Certi-
cate proceedings
does not operate as
resjudicata.

10. By section 387 of the Act, no decision, given in dealing with an application under the Act, upon any question of right between any parties bars the settlement of the same question by a competent Civil Court.

Surrender of the
certificate if it is
invalid or has
been superseded.

11. By section 389, the holder of a certificate which has been superseded or is invalid from any of the causes mentioned in section 386 is bound to deliver it up on being required to do so by the Court which granted it, and may be punished for wilfully or without reasonable cause omitting to do so.