

lose his preference over the holder of the earlier, but unregistered, instrument by his having had notice of the latter at the time the instrument was executed in his favour; and we think that the Acting Assistant Judge, owing to his relying on the Madras cases, did not realize with sufficient distinctness the question he had to decide, which, upon the decision of this Court, was exclusively whether the defendant had or had not notice of the plaintiff's earlier sale-deed. It should be clearly understood that, in making these remarks, we are not expressing any opinion as to what the answer should be to that question. We must, therefore, send the case down for the District Judge to determine whether the second defendant had notice of the plaintiff's sale-deed when the first defendant executed in his favour the sale-deed of the 7th January, 1881. The finding to be transmitted to this Court within two months.

1885.

HATHISING
SOBHAI
v.
KUNVAJI
JAVHER.

APPELLATE CIVIL.

Before Mr. Justice Nanábhái Haridás and Sir W. Wedderburn, Bart., Justice.

IN RE THE PETITION OF RA'MDA'S BRIJ GOVANDA'S.*

Act XXVII of 1860—Certificate of heirship when necessary—Legal representative, suit by, to recover debt due to the deceased.

1885.

August 31.

The production of a certificate under Act XXVII of 1860 is not a condition precedent to the institution of a suit by a person claiming to be the legal representative of a deceased creditor. It is only where there is a reasonable doubt as to the person entitled to the property claimed in the suit that such a certificate can be required.

THE petitioner, as agent of Devkábái, sued one Amrit Nathu to recover a debt of Rs. 39-12 due to his principal, Devkábái, as the wife and alleged sole legal representative of her deceased husband, Devchand. When the suit came on for hearing before the Subordinate Judge of Bhusával, in the Khándesh District, Amrit Nathu raised an objection that Devkábái, not having previously obtained a certificate of heirship to her deceased husband, could not sue as his legal representative. The Subordinate Judge allowed the contention, and dismissed the suit.

*Extraordinary Application, No. 45 of 1885.

1885.

IN RE
RĀMDĀS
BRIJ
GOVANDĀS.

The petitioner made the present application to the High Court under its extraordinary jurisdiction, and obtained a *rule nisi*.

The rule now came on for argument.

No one appeared to show cause.

Goverdanrām Mādharām supported the rule.—There was no necessity to produce a certificate of heirship under Act XXVII of 1860, in order to entitle Devkábái, who was the undisputed sole legal representative of her deceased husband, to sue. See *Lachmin v. Gangá Prasád*⁽¹⁾; *Shivrām Bhairáv v. Sheik Abdulla*⁽²⁾.

NĀNĀBHĀI HARIDĀS, J.—The production of a certificate under Act XXVII of 1860 is not a condition precedent to the institution of a suit by a person claiming to be the legal representative of a deceased creditor. If the Subordinate Judge is of opinion that the payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled, he is at liberty to make a decree in favour of the plaintiff, if the claim is proved, without insisting upon the production of a certificate by Devkábái under Act XXVII of 1860. If, on the other hand, he is of opinion that there is a reasonable doubt as to the person entitled to the payment, he may then, before making his decree, require the plaintiff to obtain a certificate under that Act. The attention of the Subordinate Judge is directed to *Shivrām Bháiráv v. Sheik Abdulla*⁽²⁾. The order of the Subordinate Judge is reversed, and the case is sent down for trial.

Rule made absolute.

(1) I. L. R., 4 All., 485.

(2) Printed Judgments for 1884, p. 218.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

VENKATRAV BĀPU AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS,
v. BIJESING VITHALSING AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Decree—Execution—Limitation—Revival—Act XV of 1877, Sec. 19

On 20th July, 1871, the plaintiffs obtained a decree against the defendants for the sum of Rs. 4,083 and for the sale of their mortgaged property. On the 16th

* Second Appeal, No. 81 of 1884.

1885.
September 3.