

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

ANNA'PURNA'BA'I, WIDOW OF BALAVANTRA'O BHIKA'JI VAKHA'R-KAR (ORIGINAL OPPONENT), APPLICANT, *v.* LAKSHMAN BHIKA'JI VAKHA'R-KAR (ORIGINAL APPLICANT), OPPONENT.\*

1894.  
January 23.

*Succession Certificate Act VII of 1889, Secs. 17 and 20—Certificate of heirship—Hindu family—Political Agent—Grant of certificate by Political Agent—Irregularities in making grant—Stamp on certificate—Court Fees' Act VII of 1870, Sec. 26—Notification of Governor General.*

A District Judge cannot treat a certificate of heirship granted by the Political Agent in a Native State as invalid because the applicant had not given to him the requisite information as to the other members of the family and no notices had been issued to them. These irregularities of procedure may be a reason for the Political Agent to cancel the grant, but they do not enable the District Court to treat it as a nullity.

A certificate having been granted on an ordinary stamp of requisite value, it was contended that it was not properly stamped in accordance with the Court Fees' Act (VII of 1870) as required by section 17 of the Succession Certificate Act (VII of 1889), because it did not bear upon it the words "Court Fees" as directed in the notification of the Governor General, No. 361, dated 18th April, 1883.

*Held*, that though section 26 of the Court Fees' Act (VII of 1870) provides that the stamp used to denote the fee chargeable under the Act shall be of such particular kind as the Governor General in India in Council may by notification from time to time direct, and that though the Governor General had issued such notification, still the direction in the notification, that the stamp should bear the words "Court Fees" was not a matter on which he had authority to give any direction under the terms of section 26 of the Court Fees Act, and, therefore, could only be regarded as a departmental order, the non-observance of which could not invalidate the stamp for the purpose of the Act.

A certificate of heirship stamped with the proper stamp, and granted by the Political Agent of a Native State, must be recognised by the Civil Courts in British India "as having the same effect in British India as a certificate granted under this Act" as provided by section 17 of Act VII of 1889, and under section 20 precludes the granting of a certificate by a Civil Court.

THIS was an application under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code (Act XIV of 1882) against the order of A. Steward, District Judge of

\*Application No. 123 of 1893 under extraordinary jurisdiction.

1894.

ANNA'-  
PURNÁBÁ'I  
v.  
LAKSHMAN  
BHÍKÁ'JI  
VAKHÁ'R-  
KAR.

Khándesh, in the matter of an application for a certificate to collect debts under the Succession Certificate Act (VII of 1889).

One Balvant Bhikáji Vakhárkár, the Head Master of the High School at Kolhápur but whose family resided at Dhulia in the Khándesh District, died at Kolhápur on the 22nd December, 1889, leaving a widow, a mother and two brothers. The property of the deceased consisted of a deposit of about Rs. 3,200 in the Savings Bank at Kolhápur standing in his own name and a sum of Rs. 2,000 secured on the mortgage of a house at Kolhápur. After his death his widow Annápurnábái applied for a certificate of heirship, and without furnishing any information as to the relatives of the deceased obtained a certificate from the Court of the Sar Nyáyádhish (Chief Judge) of Kolhápur, which is the principal Court of original jurisdiction in that territory.

Subsequently she applied to the Political Agent of Kolhápur and Southern Marátha Country to countersign the certificate, but he refused to countersign it on the ground that it was not on a British stamp, and could not, therefore, be countersigned by a British officer. The widow, thereupon, produced an ordinary stamp paper and not a Court fee stamp as contemplated by the Court Fees' Act (VII of 1870), and upon it obtained the Political Agent's certificate under the Succession Certificate Act (VII of 1889).

Subsequently Lakshman Bhikáji Vakhárkar (the opponent), claiming to be an undivided brother of the deceased, applied to the Joint Subordinate Judge of Dhulia for a certificate under the said Act to enable him to recover the debts due to the deceased. His application was opposed by Annápurnábái, who contended (*inter alia*) that until the certificate granted to her by the Political Agent was cancelled no other certificate could be granted.

The Joint Subordinate Judge of Dhulia, however, granted Lakshman a certificate with reference to the Savings Bank deposit of the deceased, but he held that he had no jurisdiction to grant one as to the debt secured in the house at Kolhápur.

On appeal the Judge amended the order of the lower Court and directed that a certificate should be issued to Lakshman with

respect to both the debts, for the following (among other) reasons:—

“The certificate granted by the Political Agent is invalid, because it is stamped with a general stamp only, whereas under the provisions of section 17 of Act VII of 1889 it should have been stamped with Court fee stamp.

“The certificate from the Sar Nyáyádhish was obtained by misrepresentation and deceit. If Annápurnábái shows any intention of acting on the certificate so obtained, the applicant Lakshman Bhikáji will have to sue for an injunction preventing her from dealing in any way with the property of the deceased in the Kolhápur Court.

“With regard to the mortgage secured by immoveable property in the city of Kolhápur, I do not see that there is any objection to my including this in the certificate granted to Lakshman Bhikáji. Section 17 gives a certificate from a Political Agent, if duly stamped, in force in British India, the same force as a certificate granted under the Act. I do not see why this arrangement should not be reciprocal, and it may be so in the Kolhápur State. All that the certificate from this Court gives is the right to recover that debt. Whether he succeeds in recovering it or not, is another matter.”

Annápurnábái applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling upon the opponent Lakshman Bhikáji Vakhárkar to show cause why the order should not be set aside.

*Máneeksha J. Taleyárhán* appeared for the applicant Annápurnábái in support of the rule:—The certificate which was granted to us by the Political Agent was in the form prescribed under section 17 of the Succession Certificate Act (VII of 1889). We obtained a certificate from the Political Agent of Kolhápur, because we lived with the deceased at Kolhápur. The fact that the certificate granted by the Political Agent is not engrossed on a Court fee stamp, but on an ordinary commercial stamp, is of no consequence. The proper stamp duty of Rs. 65 has been paid. Government issues different kinds of stamps merely for the purpose of keeping separate accounts. The certificate granted to us by the Political Agent is valid, and if so, then the certificate granted to Lakshman by the Judge is invalid under section 20 of the Succession Certificate Act (VII of 1889). Even according to section 28 of the Court Fees' Act the certificate of the Political Agent would not be invalid, it being properly stamped.

*Shamráo Vitthal* for the opponent Lakshman Bhikáji showed cause:—First we contend that the applicant has no right at all to

1894.

ANNA'-  
PURNABA'I  
v.  
LAKSHMAN  
BHIKAJI  
VAKHAR-  
KAR.

1894.

ANNA-  
PURNABAI  
v.  
LAKSHMAN  
BHIKAJI  
VAKHAR-  
KAR.

a certificate. The deceased was a member of an undivided family, and we are entitled to his property by survivorship even without a certificate under the Succession Certificate Act—*Ganesh v. Bhima* (1). The certificate of the applicant is invalid. It was granted without any inquiry as to whether other relatives of the deceased were entitled to his property. Annápuṛnábái did not inform the Court of the Sar Nyáyádhish or the Political Agent of Kolhápur of the existence of the other relatives of the deceased, and fraudulently obtained the certificate. We also contend that the certificate of the Political Agent is invalid, because it is not properly stamped. Section 26 of the Court Fees' Act enacts that the Court fee stamps shall either be impressed or adhesive according to the direction of the Governor General in Council; and there is a Government Resolution (No. 361, dated the 18th April, 1883) which lays down that when a Court-fee stamp up to rupees ten is required, then the stamp should be adhesive, and when the fee is higher than rupees ten, then an impressed stamp should be used. Further, it provides that the stamps, whether adhesive or impressed, should have the words "Court Fees" on it. The certificate of the Political Agent is not on such a stamp, and, therefore, it is invalid.

SARGENT, C. J. :—The District Judge has confirmed the grant of a certificate by the Subordinate Judge, on the ground that the certificate granted by the Political Agent was invalid, because the applicant had not given the Political Agent the requisite information as to the other relatives of the family, and no notices had been issued to them. These irregularities of procedure, if true, might possibly be reasons for the opponent asking the Political Agent to cancel the grant, but they do not enable the District Court to treat it as a nullity.

As to the certificate not being properly stamped in accordance with the Court Fees' Act of 1870, as required by section 17 of Act VII of 1889, because it does not bear upon it the words "Court Fees," it is true that section 26 of the Court Fees' Act VII of 1870 provides that the stamp used to denote the fee chargeable under the Act "shall be impressed or adhesive or

(1) P. J., 1891, p. 228.

partly impressed or adhesive as the Governor General in India in Council may by notification in the *Gazette of India* from time to time direct," and that by notification of the Governor General, (No. 361, dated 18th April, 1883), it was provided that in case the fee chargeable should be under Rs. 10, an adhesive stamp should be used, and when the fee should exceed Rs. 10, an impressed stamp, and that in both cases the stamp should bear the words "Court Fees"; but as to the direction that the stamp should bear the word "Court Fees" it is to be remarked that it is not a matter on which by the terms of section 26 of the Court Fees' Act the Governor General in Council had authority to give any direction, and it can, therefore, only be regarded as a departmental order, the non-observance of which cannot invalidate the stamp for the purpose of the Act. As Rs. 65, the amount of the stamp impressed on the certificate granted by the Political Agent, was admittedly the correct amount, the stamp was, in our opinion, in accordance with the provisions of the Court Fees' Act.

Under these circumstances the District Court ought to have recognized the certificate of the Political Agent as "having the same effect in British India as a certificate granted under this Act" as provided by section 17, and which, therefore, by section 20 would preclude the granting of a certificate by the District Court. The District Court has, therefore, acted without jurisdiction in making the grant, and we must make the rule absolute and cancel the grant, with costs.

*Rule made absolute.*

1894.

ANNA-  
PURNABA'I  
v.  
LAKSHMAN  
BHIKAJI  
VAKHA'R-  
KAR.