

[PARSONS, J., referred to *Bungsee Singh v. Soodist Lall*<sup>(1)</sup>.]

SARGENT, C. J. :—The opinion of the Subordinate Judge that the plaintiff could sue alone on the bond is correct. Costs to be costs in the case.

1895.

HARI  
VA'SUDEY  
KAMAT  
v.  
MAHA'DU  
DA'D GAYDA.

*Order accordingly.*

(1) I. L. R., 7 Cal., 739.

## APPELLATE CIVIL.

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

BA'BA'SA'B VALAD LODSA'B, CURATOR AND MANAGER OF THE PROPERTY OF DECEASED DA'DA'SA'B KANTY, PLAINTIFF, v. NARSA'PPA BIN IRA'P-PA'NNA, DEFENDANT.\*

1895.

*March 21.*

*Succession Certificate Act (VII of 1889), Sec. 4—Curator—Act XIX of 1841.*

A curator appointed under the Curator's Act (XIX of 1841) is not a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage, and is not required to take out a certificate under section 4 of the Succession Certificate Act (VII of 1889) before he can obtain a decree.

THIS was a reference by Ráo Bahádur G. V. Limaye, First Class Subordinate Judge of Dhárwár, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff was appointed curator of the estate of one Dádámiya valad Hatelsáheb under Act XIX of 1841, and as such he sued to recover rupees ninety due on a bond passed to the deceased by the defendant on the 27th August, 1891.

The defendant contended (*inter alia*) that the plaintiff could not sue without a certificate under the Succession Certificate Act (VII of 1889).

The Subordinate Judge thereupon submitted the following question :—

“Is the curator entitled to sue without production of a succession certificate under Act VII of 1889?”

The opinion of the Subordinate Judge was in the negative.

\* Civil Reference, No. 4 of 1895.

1895.

BĀBĀSĀB  
v  
NĀRSĀ'PĀ

*Manchubhai N. Choksi (amicus curiæ)*, for the plaintiff :—In the present case the certificate which has been granted to us under the Curator's Act (XIX of 1841) expressly authorizes us to institute suits. Therefore, a succession certificate is not necessary for the maintenance of the suit. Further, it is not necessary for a curator appointed under section 9 of the Curator's Act to obtain a certificate contemplated by section 23 of the Succession Certificate Act (VII of 1889), because a curator does not become entitled to the effects of the deceased as his representative, but as a person appointed by the Court to take charge of his property.

*Dhondu P. Kirloskar (amicus curiæ)*, for the defendant :—Section 4 of the Succession Certificate Act (VII of 1889) applies to the case of a curator. The plaintiff sues in a representative capacity. He is identified with the persons eventually entitled to succeed to the estate of the deceased by right of inheritance or otherwise. He is thus a person claiming to be entitled to the effects of the deceased within the meaning of section 4 of the Succession Certificate Act.

PARSONS, J. :—We are of opinion that a curator appointed under Act XIX of 1841 is not a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage within the meaning of section 4 of the Succession Certificate Act (VII of 1889), and that he is not required to take out a certificate under it before he can obtain a decree. He is not a representative of the deceased person, but is merely entrusted by the Court with certain powers over the estate for a temporary purpose, amongst which is the power to sue in his own name given him by section 9 of Act XIX of 1841. We are confirmed, in this opinion, by the provisions of section 23 of the Succession Certificate Act, for which there would have been no necessity had the provisions of section 4 applied to the curator, since it contemplates his exercising his authority until a certificate under the Act has been granted.

*Order accordingly.*