

## APPELLATE CIVIL.

Before Sir L. Jenkins, Kt., Chief Justice, and Mr. Justice Ranade.

GULABCHAND GAMNAJI (ORIGINAL OPPONENT), APPELLANT, v.  
MOTI CHATRAJI (ORIGINAL APPLICANT), RESPONDENT.\*

1900.

September 11.

*Succession Certificate Act (VII of 1889), sections 6, 7 and 9—Summary proceedings—Questions of disputed adoption not to be determined in such proceedings—Security—Guardian's right to certificate on behalf of the minor—Guardian and Ward—Minor—Practice—Procedure.*

Questions arising under the Succession Certificate Act (VII of 1889) are to be determined by a summary proceeding, *i.e.* by a short inquiry leading up to and resulting in a rapid decision in contrast with the lengthy investigation which may be required for the more tardy determination of a regular suit. The nature of the inquiry must depend on the circumstances of each case.

An application by a guardian of a minor is not contemplated by section 6, clause (d), of Act VII of 1889, which only permits the petitioner, who claims the right for himself, to apply.

Where on an application for a certificate under the Succession Certificate Act (VII of 1889), section 6, questions of adoption affecting the right to the certificate were raised, which could not be summarily disposed of,

*Held*, that the Judge ought to have decided the *prima facie* right of the applicant under clause 3 or clause 4 of section 7 of the Act without waiting to decide the issue raised as to the adoption.

APPEAL from the decision of E. H. Moscardi, District Judge of Surat.

The applicant, Moti Chatraji, applied under the Succession Certificate Act (VII of 1889), section 6, for a certificate to collect the debts due to one Bai Dahi, the widow of Gamna Karmaji, the applicant's uncle (father's brother).

He alleged that a few days before her death Bai Dahi adopted his (the applicant's) minor son Virchand, and that on her death Virchand became entitled to succeed to all her property. He therefore, as father and guardian of the minor, applied for a certificate to enable him to collect the debts due to the estate.

The opponent Gulabchand disputed both the factum and validity of Virchand's adoption. He contended that he himself was the adopted son of Bai Dahi, and as such he claimed to be entitled to the certificate.

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The District Judge raised issues as to the alleged adoptions and as to the right of the applicant to obtain a certificate, and both parties tendered numerous witnesses to establish their respective cases.

The District Judge, after repeated adjournments, finally decided the case on 12th February, 1900. He held that the applicant was the nearest heir and kinsman of the deceased Bai Dahi's husband; that his son Virchand had been legally adopted by Bai Dhai on 20th January, 1898; that the opponent Gulabchand's adoption was not proved, and that the applicant, Moti Chatraji, was entitled, as guardian of the minor Virchand, to the certificate prayed for.

He therefore issued an order directing that a certificate should be issued to Moti Chatraji, the applicant, as guardian of the minor Virchand.

Against this decision the opponent, Gulabchand, appealed to the High Court.

*G. S. Rao* for appellant.

*Manubhai Nanabhai* for respondent.

JENKINS, C.J. :—I think the mode in which the District Judge has allowed this case to be conducted clearly shows he does not appreciate the purpose and scheme of the Succession Certificate Act, 1889. This is an Act to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons. It recites that it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons. And by section 7 it is provided that—

(1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the Court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit;

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

It is therefore obvious, it was contemplated that questions arising under this Act were to be determined by a summary proceeding. It may not be possible to precisely define a summary proceeding. It is enough for the present purpose to say that when the Legislature requires the Court to decide in a summary manner the right to the certificate, it contemplated a short enquiry, leading up to and resulting in a rapid decision, in contrast with the lengthy investigation which may be required for the more tardy determination of a regular suit. The nature of this enquiry must depend on the circumstances of each case, but here it is perfectly clear that when the Judge found the course these proceedings were going to take, he ought, in the exercise of his judicial discretion, to have declined to allow the parties to protract this litigation to a length little short of scandalous. The application was made on the 8th of June, 1898, and it was actually not until the 12th of February, 1900, close on two years after, that judgment was pronounced. During that period there were no less than fourteen adjournments while the Judge allowed the applicant to call no less than thirteen witnesses. The opponent, apparently asked for summonses for fourteen witnesses. Fortunately, however, only four were served, and only one of them examined. Under these circumstances, more especially when regard is had to the nature of the question involved, the Judge should have acted under section 7 (3). The result is that there has been all this waste of time and expense for no useful purpose; for section 25 provides: "No decision under this Act upon any question of right between any parties shall be held to bar the trial

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of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto." Therefore the whole of this question will have to be fought over again.

Then the District Judge has allowed the application to be made for a certificate to collect the debts belonging to the estate of Bai Dahi, and made his order in those terms, though it is obvious that the debts belong to the estate of her husband. In the next place he has granted a certificate to the applicant as guardian of the minor without requiring any security, which was obviously improper. I can find no authority in the Act for making any such appointment as the Judge has purported to make.

The result is that we must set aside his order and direct the present certificate, if issued, to be given up. We will (as no objection is raised) treat the application as one referring to the estate of Gamna, and acting under section 7 (3) we grant a certificate to the petitioner as the person who would *prima facie* have the best title in the absence of an adoption. Our justification for so acting is that the question of an adoption is obviously too intricate to be determined in these proceedings. The certificate will only be granted on the petitioner giving security under section 9, the amount and character to be determined by the District Judge. Each party will bear his own costs in the lower Court, but the respondent must pay the appellant his costs of this appeal. We do not interfere with the costs in Application 16.

RANADE, J. :—The District Judge appears in this case to have entirely misconceived the true character of the proceeding under Act VII of 1889. The preamble of the Act shows that it was intended to facilitate the collection of debts due to deceased persons and to afford protection to parties paying such debts to the representatives of such persons. A person who claims the right to be representative of a deceased owner of the debt is empowered by section 6 to make the application, and section 7, clause 3, provides that when the Court cannot decide the right to the certificate without determining questions of law or fact,

which seem to it to be too intricate and difficult for determination in a summary proceeding, it may grant the certificate to the applicant if he appears to be the person having *prima facie* the best title thereto, and clause 4 provides that where there are more applicants than one, it is to decide who has the greatest interest and who is most fit; and section 9 provides that when the inquiry is held under section 7, clause 3 or clause 4, security shall be taken from the person to whom the certificate is granted. The District Judge seems to have lost sight of these provisions of sections 6, 7 and 9. He allowed the petitioner, Moti Chatraji, to apply for a certificate under this Act, not for himself, but as a guardian of a minor son of his, named Virchand, who was given in adoption to Bai Dahi, widow of one Gamna Karmaji, and who was the owner of the debts for which the certificate is claimed. Such an application by an alleged guardian of a minor adopted by the deceased is not contemplated by section 6, clause (d), which only permits the petitioner who claims the right for himself to apply.

As regards the nature of the inquiry the Judge states that thirteen witnesses were examined on behalf of the applicant, and five witnesses were examined on behalf of the opponent whose application for many more witnesses was refused by the Judge. The questions at issue related to the proof of two disputed adoptions, both parties claiming to be adopted by Bai Dahi. The adoption dispute involves by-issues of the performance of ceremonies and the authority to Bai Dahi to make adoption. Thus it seems that the inquiry involves intricate and difficult questions of law and fact, which could not be summarily disposed of, and the Judge ought to have decided the *prima facie* right of the applicant under clause 3, or under clause 4, as between the applicant and the opponent. The District Judge treated the case as though it was a regular suit, and decided in the minor applicant's favour, and passed the order in favour of Moti, the minor's natural father, as guardian, without taking security as provided by section 9. The inquiry by reason of this mistake was prolonged for nearly two years. In all these points the Judge appears to have misconceived the true scope of the inquiry, and his order cannot be therefore supported as it stands.

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The question of the rival claims of the parties who profess to be adopted by Bai Dahi cannot be disposed of in an inquiry under this Act, and must be reserved for future litigation by the persons interested. Fortunately in this case Moti Chatraji, the petitioner, is admittedly the natural heir of the deceased. Karma had two sons, Chatra and Gamna, and Moti is Chatra's son; he is thus the nephew of Gamna and Bai Dahi. Independently of the alleged adoptions he would be the heir. The opponent admitted that Moti was nephew and he himself was a more distant relation. The certificate application was made by Moti, and under the circumstances the District Judge might have treated him as applicant in his own right and granted him the certificate as the nearest natural heir. We now make that order by varying the decision of the District Court, and grant the certificate to Moti Chatraji, and under the circumstances remand the case to the District Court to fix the security to be required to be taken from Moti Chatraji for rendering account of the debts &c. received by him. The costs in the lower Court should be borne by each party, and in this Court the appellant should recover his costs from the respondent.

*Decree varied.*


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## APPELLATE CIVIL.

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*Before Mr. Justice Candy and Mr. Justice Whitworth.*

RAMBHAT (ORIGINAL PLAINTIFF), v. SHANKAR BASWANT  
(ORIGINAL DEFENDANT).\*

1901.

January 14.

*Jurisdiction—Defendants non-resident foreigners—Cause of action arising within jurisdiction—Civil Procedure Code (Act XIV of 1882), section 17, explanation III—Letters Patent, clause 12—Small Cause Courts Act (IX of 1887), section 18.*

Under the Civil Procedure Code (Act XIV of 1882) British Courts are empowered to pass judgment against a non-resident foreigner provided that the cause of action has arisen within the jurisdiction of the Court pronouncing the judgment.

\* Reference No. 21 of 1900.