

CHAPTER 6

Probate, Administration and Succession Certificates

Part A

PROBATE AND ADMINISTRATION

1. Reference to Indian Succession Act, 1925—The present law of Probate, Administration and Succession Certificates is contained in Indian Succession Act of 1925, as amended. The references below are to the Act of 1925.

2. Inventory of property and assets and debts and accounts to be put in—A person to whom a grant of Probate or Letters of Administration is made is required to file a full and true inventory of the property and credits of the estate and of all the debts owing by any person in Court within six months, or such further time as the Court may allow from the date of the grant and to render accounts within one year, or such further time as the Court may allow (Section 317).

3. Form for grant of Probate and Letter of Administration—The form in which the grant of Probate is to be made will be found in Schedule VI to the Act and that for the grant of Letters of Administration in Schedule VII.

4. Copy of Section 317 prescribing penalty for not filing inventory and accounts to be given—The duty of an Executor or Administrator in regard to the exhibiting of an inventory and account and the penalty to which such Executor or Administrator becomes liable for omission to comply with the requisition is detailed in Section 317 of the Act, and this section is printed in small type at the foot of the form of grant prescribed by the High Court (Form 176). If for any reason the printed form is not used a copy of Section 317 should be delivered to the person receiving the grant so that there may be no excuse for failure to comply with the requirements of law.

5. Probate or Letters should be surrendered on revocation of grant—Section 296 provides that when a grant is revoked or annulled under Section 263 the Probate or Letters of Administration must be surrendered to the Court by the person to whom they were granted and a penalty is prescribed for failure to comply with this requisition.

6. Case in which probate or Letters are conclusive in another State—In respect of estates in which the value of the property affected beyond the limits of the State does not exceed Rs. 10,000 and the deceased at the time of his death had his fixed place of abode within the jurisdiction of a District Judge the grant of Probate or Letters of Administration by the District

Judge has effect, unless otherwise directed by the grant, throughout the other State. (Section 273).

7. Procedure where Probate or Letters have to take effect in other State(s)—Section 274 of the Act prescribes the transmission to High Court and District Judges of certificates of grants having effect in other State(s).

8. Amount and locality of assets beyond the State to be stated—Section 276 and 278 of the Act require applicants to state the amount and locality of assets situated outside the State.

9. Applicants to State in some cases whether Probate or Letters have been applied for elsewhere—Section 270 requires applicants, in certain cases, to state whether or not application for Probate or Letters of Administration has been made to any other Court.

10 Case where copy of citation to be issued outside State—Section 283 directs the issue of a copy of the citation outside the State to the District Judge in whose jurisdiction the property is situated.

11. Inventory to include property in any part of India in certain cases—Section 318 directs that in cases of the nature described in that section, the executor or administrator shall include in the inventory of the effects of the deceased all his movable and immovable property situated in India.

12. Certificate where Probate or Letters are effective throughout India—When a grant of Probate or Letters of Administration is made, and it is intended that the grant is to have effect throughout India, a certificate in the following terms should be endorsed at the foot of such grant, viz.,:

Certified that the value of the property affected beyond the limits of the [.] by the foregoing grant does not exceed ten thousand rupees.

(Sd).

District Judge

13. Rules framed under Sections 223 and 226 of the Act—In exercise of the powers conferred by Sections 223 and 226 of the Indian Succession Act, 1925 (XXXIX of 1925) the Central Government is pleased to make the following rules:

1. In these rules—

(a) “Share capital” includes stock; and

(b) “Trust business” means the business of acting as trustee under wills and settlements and as executor and administrator.

2. The conditions to be satisfied by a company in order to render it eligible for the grant of probate or letters of administration under the Indian Succession Act, 1925, shall be the following namely:

(1) the Company shall be either—

(a) a company formed and registered under the Indian Companies Act, 1913, or under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882, or a company formed under any other Act of the Governor-General in Council or of the Indian Legislature, or

(b) a company constituted under the law of the United Kingdom of Great Britain and Northern Ireland or any part thereof, and having a place of business in British India, or

(c) a company established by Royal Charter and having a place of business in British India.¹

(2) The company shall be a company empowered by its constitution to undertake trust business.

(3) the company shall have a share capital for the time being subscribed of not less than—

(a) Rs. 10 lakhs in the case of a company of the description specified in sub-clause (a) of clause (1) and

(b) £ 100,000 in the case of a company of the description specified in sub-clause (b) of clause (1) of which at least one-half shall have been paid up in cash:

Provided that the Central Government may exempt any company from the operation of this clause.

(Government of India Notification No. F. 349/32-Judl., dated the 17th January, 1933 as modified by Government of India Notification No. F. 242/35, dated the 27th March, 1935).

Part B SUCCESSION CERTIFICATES

1. Introductory—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.

2. Sub-Judges empowered to grant certificate—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).

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.

3. Succession Certificate, etc., should be obtained by the heir for recovery of debts to a deceased person—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 procedure 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 plaintiffs 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 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).

(b) *Definition of debt*—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)].

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.

(c) *Application for a Succession Certificate to be signed and verified. Its contents*—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;

(d) *Manner of inquiry and security to be taken from the grantee of certificate*—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 point 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) *Objection to application. Procedure in case of several claimants for a certificate*—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 application will generally be most conveniently heard in a single proceeding between the contending parties;

(f) *Points to be considered in deciding the cases of rival claimants*—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) *Application and certificate to contain details of debts and securities. Extension and amendment of the certificate*—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).

4. Form and contents of certificate—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 duly inserted in the first instance, so as to obviate the necessity for subsequent amendment of the certificate.

5. Requisition of security from grant of certificate—It has already been pointed out that, in any case in which a Court proposed 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.

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

The amount of Court-fees 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.

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.

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 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".

COMMENTS

Clauses 2 and 3 Section 14 of the Succession Certificate Act, 1889 must be read together. If the application is allowed, *i. e.*, if the order for the grant of a certificate has been made, the sum in deposit becomes at once legally appropriated, as duty, to the extent of the debt covered by the order, and cannot be refunded.

In other cases a refund can be made. *Sankara Ayyar and Another v. Nainar Mooppanar and Others*, (1898) I. L. R. 21 Mad. 241.

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

8. Revocation of certificate—Provision is made in Section 383 for revoking certificates on certain grounds which are specified.

9. Grant of Probate or Letters supersedes succession certificate—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.

10. Decision in succession Certificate proceedings does not operate as *res judicata*—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.

11. Surrender of the certificate if it is invalid or has been superseded—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, any may be punished for wilfully or without reasonable cause omitting to do so.

1. These powers have now been transferred to the State Government—*vide* the Government of India (Adaptation of Indian Laws) Order, 1937.