

WORKSHOP dt.15-12-2018

**"LAW RELATING TO SUCCESSION CERTIFICATE UNDER
INDIAN SUCCESSION ACT, 1925"**

by

Sri G. Srinivas
Junior Civil Judge,
Narasannapeta

Prior to move in to the topic, it is the time to refer that the word origin for "succession" is early 14c., "fact or right of succeeding someone by inheritance," from Old French **succession** (13c.), from Latin successionem (nominative successio) "a following after, a coming into another's place, result," from successus, past participle of succedere (see succeed).

Indian Succession Act, 1925:

The Indian Succession Act came into operation on 30th September, 1925 and it seeks to consolidate all Indian Laws relating to succession. The Act consists of 11 parts, 391 sections and 7 schedules and this Act is applicable to intestate and testamentary succession.

Succession means capable of comprehending every kind of passing of property. When the British settled down to govern India, they were faced with the task of ascertaining the nature and incidents of the laws to be administered. With reference to the two main communities inhabiting the country, namely the Hindus and Mohammadans, each of these communities had its own personal laws embodied in its sacred texts, but there were other smaller section of the population which belonged to neither of these communities and in those cases, it was not proper to administer the laws of a religion to which they did not owe any adherence or commitment. Amongst such minor communities were the Christians and Parsis. It was then the thought of enactment of law of succession for the other communities was felt. Thus came the Indian Succession Law.

What is Succession Certificate:

A succession certificate is issued by a civil court to the legal heirs of a deceased person. If a person dies without leaving a will, a succession certificate can be granted by the court to realise the debts

and securities of the deceased. It establishes the authenticity of the heirs and gives them the authority to have securities and other assets transferred in their names as well as inherit debts. It is issued as per the applicable laws of inheritance on an application made by a beneficiary to a court of competent jurisdiction. A succession certificate is necessary, but not always sufficient, to release the assets of the deceased. For these, a death certificate, letter of administration and no-objection certificates will be needed.

A succession certificate, strictly speaking, does not effect adjudication of title of the deceased far less than that of the holder as regards the debts and securities covered thereunder. Yet, simply to afford protection to the parties paying the debts. The grant of succession certificate is conclusive against the debtor. A succession certificate is effect throughout the whole India as per section 380 of The Indian Succession Act, 1925. According to sections 381 and 386 of the Act, a succession certificate is conclusive as against the person/persons liable to whom full indemnity is afforded (make available) for payments made. But, despite the succession certificate is only conclusive of the representative title of the holder thereof as against the debtors, a suit of declaration will not lie that the holder of the certificate is not the legal representative of the deceased.

Grant of Succession Certificate- Certain Restrictions:

Under the following circumstances, no succession certificate can be granted.

- i) under section 370 (1) of the Act, as to any debt or security to which a right is required to be established by probate or letters of administration;
- ii) that too, if sections 212 of the Act applies;
- iii) if section 213 of the Act applies;
- iv) that is to say that where law requires probates or letters of administration as mandatory to establish right to property as in the cases of Parsis, Jews, East Indians, Europeans and Americans.
- v) Provided that nothing will prevent as to granting a succession certificate to any person entitle to the effects of a deceased Indian Christian or any part thereto pertaining to any debt or

security, that the right can be established by letters of administration.

Procuring a Succession Certificate

A few important pointers for procuring a succession certificate are as follows:

- The beneficiary/ legal heir is required to approach a competent court and file a petition for a succession certificate.
- The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant the succession certificate.
- The petition should mention important details such as the name of petitioner, relationship with the deceased, names of all heirs of the deceased, time, date and place of death. Along with the petition, death certificate and any other document that the court may require should also be attached.
- The court, after examining the petition, issues a notice to all concerned parties and also issues a notice in a newspaper and specifies a time frame (usually one and a half months) within which anyone who has objections may raise them. If no one contests the notice and the court is satisfied, it passes an order to issue a succession certificate to the petitioner.
- If there is more than one petitioner, then the court may jointly grant them a certificate but it will not grant more than one certificate for a single asset.
- When the District Judge grants a succession certificate, he shall specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted (i) to receive interest or dividends on the securities; or (ii) to negotiate or transfer the securities; or (iii) both to receive interest or dividends or negotiate or transfer the securities.
 - With respect to costs involved, the Court typically levies a fixed percentage of the value of the estate as its fees (which is more

particularly prescribed under the Court-fees Act, 1870, (7 of 1870)). This fee is to be paid in the form of judicial stamp papers of the said amount. In addition to Court fees, the applicant will also be required to pay requisite fees to its lawyer.

How to apply for "Succession Certificate?:"

- i) An application should be made to The District Judge under section 372 of Act;
- ii) the petitioner must sign and verify the petition;
- iii) the residences of the relatives and family of the deceased must be mentioned;
- iv) In case of The Hindu Succession Act (Act XXX OF 1956), the names of the heirs must be mentioned in the petition;
- v) the right of the petitioner should be mentioned;
- vi) Either Ordinary residence of the deceased, at the time of death, or the property of the deceased should be within the limits of the Jurisdiction of the Court concerned;
- vii) the debts and securities as to which the succession certificate is applied for should be mentioned;
- viii) the absence of any impediment u/sec. Sub section (1) of Section 370 of the Act or any other provisions of the Act or any other enactments to the grant of succession certificate or to the validity of it in case of it was granted, must be mentioned.

Succession Certificate vis-a-vis Wills

In the event a person dies leaving a Will, a succession certificate may not be required for inheriting the assets of the deceased since the entire estate of the deceased shall vest on the executor of the Will for distribution as per the instructions set forth in the Will. Although Section 370 of the Indian Succession Act, 1925, specifically provides that a succession certificate shall not be granted with respect to any debt or security in cases where a right to such property is required to be established by obtaining letters of administration or a probate, in certain states, a probate and a succession certificate are compulsory to transfer the title of an immovable property. It is to be further noted

that in the absence of a Will, banks and financial institutions typically rely on the succession certificate and/or a legal heirship certificate.

Procedure for procuring a Legal Heirship Certificate

While the Indian Succession Act, 1925 does not prescribe a method for obtaining a legal heirship certificate, it can be easily issued by revenue officers such as Tahsildars, Revenue Mandal officers or Talukdars, in every taluk. A legal heirship certificate can be issued and relied upon for certain limited purposes only. Legal heirship certificates are not conclusive when it comes to determining the legitimate class of heirs of a deceased person under the laws of succession or the title of heirs to any disputed property that belonged to the deceased. In case of any disputes between the heirs of the deceased, the revenue officer cannot issue a legal heirship certificate and is required to direct the heirs to approach a civil court for determination of the rightful heirs.

What are the effects of a succession certificate?

The holder of a succession certificate

- Has a claim over the property and assets of the deceased person.

- Has the authority to represent the deceased in collecting debts and securities due to the deceased or payable in his name.

- Inherits the debts and other liabilities of the deceased person.

The succession certificate is valid throughout India. The Indian Succession Act, 1925 governs the same.

Law of succession

The law of succession defines the rules of devolution of property in case a person dies without making a Will. These rules provide for a category of persons and percentage of property that will devolve on each of such persons.

A Will is a legal declaration. Certain formalities must be complied with in order to make a valid Will. It must be signed and attested as required by law. A Will is intended to dispose off property. There must be some property which is being given to others after the death of the testator. A Will becomes enforceable only after the death of the testator. It gives absolutely no rights to the legatee (the person who

inherits) until the death of the testator. It has no effect during the lifetime of the testator.

In case legal heirs are residing in outside India

Application can be filed through Power of Attorney also and the personal presence of individual before court is not required for the purpose of obtaining Succession Certificate.

Newspaper Publication informing the Public at large

Once the application for succession certificate is filed the Court will issue notice to all the legal heirs and close relatives, so that anyone having any objection in grant of Succession Certificate in favour of Applicant can raise objection.

Similarly, Publication of the notice in newspaper to inform public at large about the application for issuance of succession certificate can raise objection. After newspaper publication court waits for 45 to 60 days before granting the Certificate. If no one contests the application on the expiry of this period, the court passes an order for issuance of succession certificate and if any objection is raised, the Court will first decide the objections and then proceed further.

Extension of Succession Certificate

The Court can extend the Succession certificate to any other immovable property of which the applicant was not having knowledge at the time of filing of the application.

Court Fees

The court levies a fixed percentage of the value of the securities/movable properties as court fee for purpose of issuance of the certificate, and the same is required to be paid at the time of grant of Succession Certificate by Court.

Security from the person to whom Succession Certificate is granted

That the person to whom the Court proposes to grant the Certificate shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts

and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

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

Effect of certificate granted or extended by a Court outside the State.-

Where a certificate in the form, as nearly as circumstances admit, of the Second Schedule has been granted by a Court outside the State or where a certificate so granted has been extended in such form by such Court, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, with respect to certificates under this Act, have the same effect in the State as a certificate granted or extended under this Act.

Revocation of certificate;- A certificate granted under this Act may be revoked for any of the following causes, namely :-

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (d) that the certificate has become useless and inoperative through circumstances;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal:

- (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act. and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.
- (2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.
- (3) Subject to the provisions of sub-section (1) and of Orders 46 and 47 and sections 113 to 115 of the Code of Civil Procedure as applied by section 141 of that Code, an order of a District Court under this Act shall be final.

Effect on certificate of previous certificate, probate or letters of administration:–

Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Effect on certificate of subsequent probate or letters of administration:–

- (1) A grant of probate or letters of administration under the Probate and Administration Act in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.
- (2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

Validation of certain payments made in good faith to holder of the invalid certificate:–

Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

Prohibition of exercise of certain powers by curators:–

- (1) Where a certificate has been granted, under this Act or the Succession Certificate Regulation of 1896, or a grant of probate or letters of administration has been made, a curator appointed under the Succession (Property Protection) Act shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.
- (2) But persons who have paid, debts or rents to a curator authorized by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

Effect of decisions under this Act, and liability of holder of certificate thereunder:–

No decision under this Act upon any question of right between any parties shall be held to bar the trial 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.

Surrender of superseded and invalid certificate

- (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that court.
- (2) If he willfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

Fee

According to Schedule II of The Court Fees Act, 1870, certain amount is levied as court fee for this process. Stamp Duty may vary from state to state.

Process

A newspaper notice for 45 days thus issued by the court. However any person having problem with it can file objections. If the court doesn't receive any objection, it issues the certificate. This process takes five to seven months.

Documents required for obtaining Succession Certificate

The list below consists of documents required for applying for the Succession Certificate:

- (i) Death certificate
- (ii) Pan Card of all the legal heirs .
- (iii) Ration card of all the legal heirs.
- (iv)-Prescribed application form by affixing a court fee stamp.

Restriction on Succession Certificate

A court can sometime require a bond with one or more surety or sureties or any other security for rendering an account of debts and securities received by the petitioner of succession certificate for indemnifying the persons who may entitled to any part of the debt or securities.

Validity of Succession Certificate

A succession certificate has validity throughout India. If a certificate should granted in a foreign country by an Indian representation accredited to that State, it should thus stamped in accordance with the Court Fees Act 1870 to have the same effect in India as a certificate granted in India.

Bare acts of the Indian Succession Act are:-

Sec.**370** deals with Restriction on grant of certificates

Sec.**371** deals with jurisdiction of the Court to grant certificate

Sec.**372** deals with Application for certificate

Sec.**373** deals with Procedure on application

Sec.**374** deals with Contents of certificate

Sec.**375** deals with Requisition of security from grantee of certificate Sec.**376** deals with Extension of certificate

Sec.**377** deals with Forms of certificate and extended certificate

Sec.**378** deals with Amendment of certificate in respect of powers as to securities

Sec.**379** deals with Mode of collecting Court-fees on certificates

Sec.**380** deals with Local extent of certificate

Sec.**381** deals with Effect of certificate

Sec.**382** deals with Effect of certificate granted or extended by Indian representative in foreign State and in certain other cases

Sec.**383** deals with Revocation of certificate Sec.**384** deals with Appeal

Sec.**385** deals with Effect on certificate of previous certificate probate or letters of administration

Sec.**386** deals with Validation of certain payments made in good faith to holder of invalid certificate

Sec.387 deals with Effect of decisions under this Act and liability of holder of certificate thereunder

Sec.388 deals with Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act

Sec.389 deals with Surrender of superseded and invalid certificates and

Sec.390 deals with Provisions with respect to certificates under Bombay Regulation 8 of 1827.

Before coming to the conclusion, I would like to refer some of the decisions of the Hon'ble Apex Courts on the law relating to Succession Certificate. ***The Hon'ble High Court of Delhi, in FAO***

No. 184/2017 dt.24th April, 2017, wherein it was held that "*in cases where someone dies without a will, succession can only be granted to the legal heirs of that person, not the nominee*".

Another case decided by the Hon'ble Apex Court in between T. Ramaiah Vs. K.S. Rooprad and others, it was held that (i) The legal representative may come on record in E.P. proceedings and trial Court need not insist them to produce Succession certificate under Indian Succession Act.

In another Judgment decided by the ***Hon'ble Supreme Court dt.27.4.2000, in between Madhavi Amma Bhavani Amma and others Vs. Kunjketty Pillai Meenaksh***, wherein it was held that "*proceedings u/Sec.372 of the Act for the grant of Succession certificate under Indian Succession Act would not bar any party to the said proceedings to raise same issue in the subsequent suit*". In another Judgment decided by the Hon'ble Supreme Court in between ***Banarsi Dass Vs. Teeku Dutta (Mrs) and Another, dt.27.4.2005***, wherein it was held that "Before issuing Succession Certificate under Indian Succession Act, 1925, it is not advisable for direction to undergo DNA test.

With the above, I convey my thanks to the Hon'ble Principal District Judge, Kadapa and the Hon'ble Administrative Judge, Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, to give such an opportunity, to be before you all on this topic on this day.
