

**WORK SHOP DT.30-03-2019**  
**"LAW RELATING TO SUCCESSION CERTIFICATE UNDER**  
**INDIAN SUCCESSION ACT, 1925"**

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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 Fresh **Succession** (13c.), from Latin Succession (nominative succession) "a following after, a coming into another's place, result," from successes, past participle of succedere (see succeed)

**Indian Succession Act, 1925:**

The Indian Succession Act came in to operation on 30<sup>th</sup> 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.

**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 for less than that of the holder as regards the debts and securities covered thereunder. Yet, simple 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 for 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 case of Parsis, Jews, East Indians, Eruopeans and Americans.
- v) Provided that nothing will prevent as to granting a succession certificate to any person entitle to the effect 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 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 contents the notice and the court is satisfied, it passes an order to issue a succession certificate to the petitioner.
- If there is not 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; of (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 court-fee Act, 1870, (7 of 1870). This fee is to be paid in the form of judicial stamp paper of the said amount. In addition to court fee, 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 residence 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-à-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 Sec.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 Will, banks and financial institutions typically rely on the succession certificate and/or legal heir certificate.

**Procedure for procuring a Legal Heir Certificate:**

While the Indian Succession Act, 1925 does not prescribe a method for obtaining a legal heir certificate, it can be easily issued by revenue officers such as Thasildar, Revenue Mandal Officers or Talukdars, in every Taluk. A legal heir certificate can be issued and relied upon for certain limited purposes only. Legal heir 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 heir certificate and is required to direct the heirs to approach a civil court for determination of the rightful heirs.

**What are the effect 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 right 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 the 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 have any

objection in grant of succession Certificate in favour of Applicant can raise objection.

Similarly, publication of the notice in newspaper to inform of public notice 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 contents 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 fee:**

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.

**Security from the person to whom Succession Certificate is granted:**

That the person to whom the court propose to grant the Certificate shall give to the Judge a bond with one or more surety or securities, 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 have been invested with the functions of the District court for the purpose of granting succession Certificate.

Only Senior Civil Judges can empowered to grant Succession Certificate. As per ROC.No.408/SO-3/2009 dt.24-12-2010 in circular No.18/2010 of Hon'ble High court of A.P., Hyderabad is authorised all the Principal Senior Civil Judge's, where there are more than one Senior Civil Judge's Court and Senior Civil Judge's court where only one court is functioning at such station to entertain original petitions filed under Indian Succession Act, 1925.

**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-fee 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;
- (a) 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.
- (b) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law of to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (c) that the certificate has become useless and inoperative through circumstances;
- (d) that a decree or order made by a competent court in a suit or other proceedings 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 provision of this Act, an appeal shall lie to the High court from an order of the 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 provision of sub-section (1) and Orders 46 and 47 and section 113 to 115 of the Code of Civil Procedure as applied by section 141 of that code, an order of District Court under this Act shall be final.

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

Saves 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 proceedings 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 letter 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 of 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 1986, 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 the persons who have paid, debts or rents to a curator authorised 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 or right between any parties shall be held to bar the trial of the same question in any suit or in any other proceedings between the same parties, and nothing in this Act shall be construed to effect 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 cause 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 wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupee, or with imprisonment for a term which may extend to three months, or with both.

**Fee:**

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

**Process:**

A newspaper note 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 be entitled to any part of the debt securities.

**Validity of Succession Certificate:**

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

Section 370 to 382 of Indian Succession Act deals with filing and procedure of obtaining Succession Certificate and succession and its impact.

Section 383 to 396 of Indian Succession Act deals with Revocation and cancellation of Succession Certificate.

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 dated 24<sup>th</sup>, April, 2017**, where it was held that "*in case 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 EP 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.27-04-2000, in between MadhaviAmmabhavaniAmm and others Vs. Kunjketty Pillai Meenaksh**, wherein it was held that "*Proceedings u/s.sec.372 of the Act for the grant of Succession Certificate under Indian Succession Act would not bar to 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. TeekuDattu (Mrs) and Another, dt.27-04-2005**, wherein it was held that "*before issuing Succession Certificate under Indian succession Act, 1925, it is not advisable for direction to undergo DNA test.*"

There is a citation in **AIR 2008 Kerala 255 K.K.Denesan and V.Ramkumar, JJ. P.K. Vishalakshi V. The Bank of India M.F.A. No.54 of 2006(P) D/6-4-2006**. *Succession Act (39 of 1925) S.372-Succession Certificate – can be granted only in respect of debts and Securities – Therefore, refusal to grant certificate in respect of immovable property – Is not improper.*

With the above, I convey my thanks to the Hon'ble Principal District Judge, Srikakulam and the Hon'ble Administrative Judge, Hon'ble High court of Andhra Pradesh, to give such an opportunity, to me before you all on this topic on this day.

**Sri P.V.Prasada Rao  
Principal Senior Civil Judge,  
Srikakulam.**

