

## **Succession Certificate Act, 1977**

### **39 of 1977**

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#### **SCHEDULE 1 :- THE FIRST SCHEDULE**

## **SCHEDULE 2 :- THE SECOND SCHEDULE**

### **Succession Certificate Act, 1977**

#### **39 of 1977**

An Act to facilitate the collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons. Whereas it is expedient to facilitate the collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows: -

#### **1. Short Title, Extent And Commencement :-**

- (1) This Act may be called the Succession Certificate Act, 1977.
- (2) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh, 1978.

#### **2. Omitted :-**

#### **3. Definitions :-**

In this Act unless there is some thing repugnant in the subject or context, -

- (1) "District Court", subject to the other provisions of this Act and of any other enactment for the time being in force, means a Court presided over by District Judge; and
- (2) "Security" means -
  - (a) any promissory note, debenture, stock or other security of the Government of India;
  - (b) any bond, debenture, or annuity charged by the 1[Act of Parliament of the United Kingdom] on the revenues of India;
  - (c) any stock or debenture of, or share in, a company or other incorporated institution;
  - (d) any debenture or other security for money issued by, or on behalf of a local authority;
  - (e) any other security which 2[the Government] may, by notification in the Government Gazette, declare to be a security for purposes of this Act.

1. Substituted by A. L. O. 2008 for "Imperial Parliament".

2. Substituted for "His Highness" by Act X of 1996.

#### **4. Proof Of Representative Title A Condition Precedent To Recovery Through The Court Of Debts From Debtors Of**

## **Deceased Persons :-**

(1) No Court shall -

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming, of-

(i) a probate or letters of administration evidencing the grant to him of administration of the estate of the deceased, or

(ii) a certificate granted under this Act or the Succession Certificate Regulation of 1896 and having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

## **5. Court Having Jurisdiction To Grant Certificate :-**

The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

## **6. Application For Certificate :-**

(1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, for the signing and verification of a plaint by or on behalf of a plaintiff and setting forth the following particulars, namely: -

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residence;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under any other provision of

this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(g) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

1[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portion thereof.]

1. Clause (3) to section 6 inserted by Act X of 1989.

## **7. Procedure On Application :-**

(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 courthouse 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 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.

## **8. Contents Of Certificate :-**

When the District Court grants a certificate, it shall therein 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 -

(a) to receive interest or dividends on, or

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

#### **9. Requisition Of Security From Grantee Of Certificate :-**

(1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to ensure for the benefit of the Judge for the time being, 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.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover as trustee for all persons interested, such amount as may be recoverable thereunder.

#### **10. Extension Of Certificate :-**

(1) A District Court may, from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

## **11. Forms Of Certificate And Extended Certificate :-**

Certificates shall be granted and extension of certificate shall be made, as nearly as circumstances admit, in the forms set forth in the Second Schedule.

## **12. Amendment Of Certificate In Respect Of Powers As To Securities :-**

Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

## **13. Omitted :-**

## **14. Mode Of Collecting Court-Fees In Certificates :-**

(1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the First Schedule to the Court Fees Act in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

## **15. Local Extent Of Certificate :-**

A certificate under this Act shall have effect throughout the whole of the State.

## **16. Effect Of Certificate :-**

Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any defect,

afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith, in respect of such debts or securities to or with the person to whom the certificate was granted.

### **17. 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.

### **18. 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.

### **19. 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 with the time allowed for an appeal under the Code of Civil Procedure.

(3) Subject to the provisions of sub-section (1) and of Orders XLVI and XLVII and sections 113 and 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.

## **20. 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 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.

## **21. 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.

## **22. 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.

### **23. 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 authorised by 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.

### **24. Omitted :-**

### **25. 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.

### **26. Investiture Of Inferior Courts With Jurisdiction Of District Court For Purposes Of This Act :-**

(1) 1[The Government] may, by notification in the Government Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last forgoing sub-section shall, subject to the provisions of Order XLVI and XLVII and sections 113 to 115 of the Code of Civil Procedure as applied by section 141 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court, and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

1. Substituted for "His Highness" by Act X of 1996.

## **27. Section 27 :-**

## **28. 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 wilfully 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.

## **29. Omitted :-**

### **SCHEDULE 1**

THE FIRST SCHEDULE

### **SCHEDULE 2**

THE SECOND SCHEDULE

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See section 11).

In the Court of

To A.E.

Whereas you applied on the day of for a certificate under the succession Certificate Act, in respect of the following debts and securities, namely:-

Debts.

Serial number Name of debtor. Amount of debt, including, interest, on date of application for certificate Description and date of instrument, if any, by which the debt is secured.

Securities Description

Serial number Distinguishing number or letter of security. Name, title or class of security. Amount or par value of security. Market-value of security on date of application for certificate.

This certificate is accordingly granted to you and empowers you to collect those debts [AND] [ TO RECEIVE] [INTEREST] [DIVIDENDS] [ON] [TO NEGOTIATE] [TO TRANSFER] [THOSE SECURITIES].

Date this day of

District Judge.

In the Court of

On the application of A. B. made to me on the.....day of ....., I hereby extend this certificate to following debts and securities, namely: -

Debts

Serial number Name of debtor. Amount of debt, including, interest, on date of application for extension. Description and date of instrument, if any by which the debt is secured.

Securities Description

Serial number. Distinguishing number or letter of security. Name, title or class of security. Amount or par value of security. Market-value of security on date of application for extension.

This extension empowers A. B. to collect those debts [AND][ TO RECEIVE] [INTEREST][DIVIDENDS] [ON] [TO NEGOTIATE] [TO TRANSFER] [THOSE SECURITIES].

Date this day of

District Judge.