

(1878) 06 AHC CK 0008

Allahabad High Court

Case No: None

Karam Ali

APPELLANT

Vs

Halima and Others

RESPONDENT

Date of Decision: June 24, 1878

Citation: (1875) ILR (All) 686

Hon'ble Judges: Turner, O.C.J.; Pearson, J

Bench: Division Bench

Judgement

1. The Munsif appears to think that obtaining a certificate is indispensable to the competency of an heir to apply for execution u/s 208 of Act VIII of 1859. This is erroneous. A person who has not obtained a certificate may apply under that section. It will of course be open to the Court, in the exercise of the discretion vested in it, if there is any doubt that the person applying for execution is entitled by inheritance to the rights decreed, to refuse the application until a certificate has been obtained. ♦ The Munsif appearing to consider himself precluded from exercising his discretion, we must set aside his order and the order of the Judge, and remit the case to the Munsif that the discretion may be exercised. Each party will bear his own costs of the proceedings in the Judge's Court and in this Court.

♦ Where important questions arise, such as the legitimacy or illegitimacy of the heir, the Court executing the decree ought not to decide them--see *Abidunnissa Khatoon v. Amirunnissa Khatoon* ILR 2 Cal 334.