

# **The Succession (Property Protection) Act, 1977**

JAMMU & KASHMIR

India

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### **Act 36 of 1977**

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The Succession (Property Protection) Act, 1977(Act No. 36 of 1977)[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 17th September, 1920, read with Stale Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]An Act for the protection of movable and immovable property against wrongful possession in cases of successions. Whereas much inconvenience has been experienced where persons have died possessed of movable and immovable property and the same has been taken upon pretended claims of right by gift or succession the difficulty of ascertaining precise nature of the movable property in such cases the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protected and the inability of heirs when out of possession to prosecute their rights affording strong temptations for the employment of force or fraud in order to obtain possession; And whereas from the above causes, the circumstances of actual possession, when taken upon a succession does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit though such summary suit may not be sufficient to prevent a party removed from possession there by from instituting a regular suit; And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession will be too tardy a remedy for obviating them all especially as regards movable property; And whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority, making the same, be beneficial under all the circumstances of the case; And whereas it will be very inconvenient to interfere with succession to estates by the appointment of curators, or by the summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced, if left to the ordinary remedy of a regular suit :-

**1. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.**

- It is hereby enacted that whenever a person dies leaving property, movable or immovable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof to make application to the Judge of the Court of the District where any part of the properties found or situate for relief, either after actual possession has been taken by another person or when forcible means of seizing possession are apprehended,

## **2. Agent etc., may apply on behalf of minor etc.**

- It shall be lawful for any agent, relative or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

## **3. Enquiry made by Judge.**

- The Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made bona fide.

## **4. Procedure.**

(Determination of right.) - In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly :Appointment of officer to secure effects. - provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

## **5. Appointment of curator pending determination of suit.**

- In case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof; provided always that, in the case of land, the Judge may delegate to the Collector, or to his officer the powers of a curator, and also that every

appointment of a curator in respect of any property be duly published.

## **6. Powers conferable on curator.**

Discretion to allow party in possession to continue - The Judge shall have power to authorise such curator either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party, in possession; provided always that it shall be entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

## **7. Curator to give security and may receive remuneration.**

Disposal of surplus. - The Judge shall exact from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorise him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. Curator may be invested with powers before. All surplus money realized the curator shall be paid into Court, and invested in public securities for the benefit security is taken. of the persons entitled thereto upon adjudication of the summary suit : provided always that, although security shall be required from the curator with all reasonable despatch and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with powers of his office.

## **8. Report from Collector where estate includes revenue paying land.**

- Where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report and he shall not be obliged to act in conformity thereto; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

## **9. Institution and defence of suit.**

- The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all the suits may be instituted or defended in the name of the curator on behalf of the

estate :Authority for collection of dues. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of the debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

#### **10. Allowance to apparent owners pending custody by curator.**

- Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a prima facie right thereto as upon a summary investigation of the rights and circumstance of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not be entitled thereto.

#### **11. Accounts to be filed by curator.**

- The curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

#### **12. Inspection of accounts and right of interested party to keep duplicate.**

- The accounts of any such curator as is above described shall be open to the inspection of all parties interested;Penalty for default as to accounts. and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator; and if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

#### **13. Bar to appointment of second curator for same property.**

- After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district from appointing any other curator :Curators of different parts of properly. Provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment of another curator in respect of the residue or any portion thereof :Power to appoint sole curator. Provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge : and provided further that, if two or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the High Court to make such orders as it shall think fit for the appointment of one curator of the whole property.

#### **14. Limitation of time for application for curator.**

- This Act shall not be put in force unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

#### **15. Bar to enforcement of Act against public settlement or legal directions by deceased.**

- This Act shall not be put in force to contravene any public act of settlement; neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property or a deceased person shall be satisfied of the existence of such directions, he shall give effect thereof.

#### **16. Court of Wards to be make curator in case of minors having property subject to its jurisdiction.**

- This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession and also appoint a curator, the suit without taking such security as aforesaid; and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

#### **17. Saving of right to bring regular suit.**

- Nothing in this Act contained shall be an impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

#### **18. Effect of decision of summary suit.**

- The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

#### **19.**

Omitted

**20.**

Omitted