

## **Mt. Rajiya And Anr. vs Mt. Sukhrani And Ors. on 23 February, 1953**

**Equivalent citations: AIR1954ALL166, AIR 1954 ALLAHABAD 166**

### **JUDGMENT**

Kidwai, J.

1. This is an office report to the effect that there is a deficiency in court-fee amounting to Rs. 250/- not only in this Court but in each of the courts below. Office, therefore, asks for a direction to the appellant to pay a sum of Rs. 750/-. This report is contested by Mr. Banerji and is supported by the learned Standing Counsel.

The facts are that a succession certificate has been granted to the defendant by the Civil Judge, Partapgarh. Subsequently the plaintiff appellant instituted a suit claiming the amount of money left by the deceased as his heir. Office has reported that this involves a cancellation of the succession certificate.

It has relied upon a case of -- 'Mokhoda Dossee v. Nobin Chunder Mitter', 16 WR 259 (Ca3) (A). That case can have no reference to Section 7, Clause (iv-A), which was inserted into the Court-fees Act by the United Provinces legislature in 1938. This clause involves payment of- court-fee for cancellation of or adjudging void instruments and decrees. An order granting a succession certificate is not a decree nor can it be said to be an instrument securing money or other property having a market value. It is only a summary decision of a right of a person to obtain payment of debts due to the deceased. It does not create any title in the person in whose favour it is granted but only indemnifies the debtor if he pays the money to the person to whom the succession certificate is granted. Even if the plaintiff's suit is decreed, it cannot mean the cancellation of the succession certificate because the debtor will still be liable to pay the money due to the person to whom the succession certificate has been granted, that is to say the succession certificate will still continue operative and will indemnify the debtor who has paid or who pays the money to which it relates. I, therefore, reject the office report. The court-fee paid is sufficient and no further fee is required.