

**PAPER PRESENTATION**

**ON**

**LAW RELATING TO**

**SUCCESSION CERTIFICATES**

**UNDER INDIAN**

**SUCCESSION ACT, 1925**

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## Introduction

**Succession** means : *"The law and procedures under which beneficiaries become entitled to property under a testator's will or on intestacy."* A certificate granted by a competent court to collect the debts and securities of the deceased, as also to receive interests or dividends on and to negotiate or transfer securities.

A document through which the disposition of deceased's property is made is called succession certificate. This certificate is given under section 370-390 of the succession act. The detail is provided below. The Indian Succession Act, 1925 defines a succession certificate as a certificate issued by a court to the legal heirs of a deceased to establish the authenticity of the heirs and give them the authority to inherit debts, securities and other assets of the deceased. The purpose of a succession certificate is limited in respect of debts and securities such as provident fund, insurance, deposits in banks, shares, or any other security of the central government or the state government to which the deceased was entitled. Its main objective is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of the deceased person.

A succession certificate may be used in situations where banks, financial and private institutions release funds to the nominee (where such nominee is not the legal beneficiary of the asset) and the nominee refuses to cooperate in distribution of the asset to the legal beneficiary. A succession certificate, strictly speaking, does not effect adjudication of title of the deceased far less than that of the holder as regards the debts and securities covered thereunder. Yet, simply 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 (herein after referred as the Act). 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 of declaration will not lie that the holder of the certificate is not the legal representative of the deceased.

Similarly, a succession certificate may be useful to prove genuineness of the claimant where the inheritance amount is substantial. Additionally, in certain states, a probate (meaning a copy of the will, if it exists, authenticated by the Court) and a succession certificate are compulsory to transfer the title of an immovable property.

### **Who can apply Succession Certificate?**

Following are the person who can apply for succession certificate:

- (i) Sound mind person
- (ii) Major person
- (iii) Person having an interest in estate of deceased
- (iv) Secretary of state
- (v) Person having beneficial interest in the debt or security of deceased person.

### ***Application for Certificate***

Application for succession certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the C.P.C for the signing and verification of a plaint by or on behalf of a plaintiff. Following are the particulars for the application of succession certificate.

- (I) Date of death of deceased
- (ii) Place of residence of deceased
- (iii) Family of Deceased and their respective residences.
- (iv) Right of Petitioner - The application must show some title or interest in the debt or security, in respect of which they has applied for the certificate. If two or more persons apply, the court must decide who has the preferential claim.
- (v) Absence of any impediment
- (vi) Debts or security in respect of which the certificate is applied for.

### ***How to apply for "Succession Certificate"?***

- i) An application should be made to The District Judge under section 372.
- ii) The petitioner must sign and verify the petition;
- iii) The residences 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.

- ix) 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 (a) to receive interest or dividends on the securities; or (b) to negotiate or transfer the securities; or (c) both to receive interest or dividends or negotiate or transfer the securities.
- x) 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 the Court-fees Act, 1870, (7 of 1870)). This fee is to be paid in the form of judicial stamp papers of the said amount. In addition to Court fees, the applicant will also be required to pay requisite fees to its lawyer.

***Competent Court to grant succession certificate:***

Section 371 of the Act explains that - "The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or if at that time he 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 a certificate under this part." Following are the some important points of section 371

- (I) Application : Application for succession certificate will be presented before a District Judge.
- (ii) Residence of Deceased with his Jurisdiction : The application will be presented before such District Judges within whose jurisdiction the deceased was ordinarily residing at the time of his death.
- (iii) No fixed place of Residence : If the deceased had no fixed place of residence at the time of his death, then application will be presented before such-district Judge within whose jurisdiction any part of the property of the deceased may be found.

### ***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 cases of Parsis, Jews, East Indians, Europeans and Americans.
- v) Provided that nothing will prevent as to granting a succession certificate to any person entitle to the effects 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.

### ***Effect of Succession Certificate:***

*To know the effect of succession certificate, it is apt to see section 381 of the Act. The succession certificate simply affords protection to the parties paying debts. It is thus cleat that there is absolutely no adjudication of title of the deceased.*

Section 376 of the Act provides that the succession certificate can be extended in respect of any debt or security not originally specified therein and if such extension is ordered, it shall have the same effect as if the debt or security to which the succession certificate is extended had been originally specified. The District Judge can extend a succession certificate only on the application of the holder of a succession certificate and not of any other person.

### **Case laws:**

In the case of *Muthia vs Ramnatham*, 1918 MWN 242, it was held that the grant of certificate gives to the grantee a title to recover the debt due to the deceased, and payment to the grantee is a good discharge of the debt."

In the case of *Srinivasa vs Gopalan*, , it was held that " The question whether the debt belonged to the deceased is not a matter to be decided on an application for a succession Certificate."

In the case of *Paramananda Chary vs Veerappan*, AIR 1928 Madras 213: 82 IC 604, it was held that "The grant of succession certificate is conclusive against the debtor. Even if another person turns out to be the heir of the deceased, it does not follow that the certificate is invalid."

In the case of *Ganga Prasad vs Saudan* , it was observed that section 381 of the Act protects the debtors and affords full indemnity to the persons liable to pay the debts and in respect of the securities covered by hte certificate as persons having the same paid in "good faith".

### ***Distinction between Succession Certificate and 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 Section 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 a Will, banks and financial institutions typically rely on the succession certificate and/or a legal heirship certificate.

### ***Legal Heirship Certificate***

A number of other documents such as legal heirship certificate, nominations and death certificate may be procured, as an alternative to a succession certificate, for the purpose of establishing an inheritance or aiding in the transfer of assets from the deceased. It is comparatively easier to obtain these documents. In some cases, a legal heirship certificate may be relied upon in the place of a succession certificate merely because family members are able to obtain a legal heirship certificate with much ease and speed. Therefore, families typically first apply for a legal heirship certificate and in the event a legal heirship certificate is not accepted by the relevant authority for any reason, then a succession certificate is applied for.

A legal heirship certificate establishes the relationship of the heirs to deceased for claims relating to pension, provident fund, gratuity or other service benefits of central and state government departments, specifically when the deceased has not selected a nominee. Banks and private companies also accept such certificates for allowing transfer of deposits, balances, investments, shares, etc.

### ***How to obtain a Legal Heirship Certificate***

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



## ***Legal Heirship Certificate vis-à-vis Succession Certificate***

A legal heirship certificate is issued to identify the living heirs of a deceased person whereas succession certificate is issued to establish the authenticity of the heirs and give them the authority to inherit debts, securities and other assets that the deceased may have left behind

### ***Conclusion :***

Succession certificate is to provide speedy remedy and quick decision in succession matters so that legal heirs of deceased may have their share in movable assets ascertained, allocated and disbursed as there may be a needy family requiring immediate disbursement of amount to meet, its merging and day to day needs of life.

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