

Shri Virendra, Editor, Printer and Publisher, The Daily Partap, Jullundur
 v.
 The Punjab State

der section 144 when the order has already expired or is likely to expire in a few days time. Following this practice I would decline to pronounce upon the validity or propriety of these orders or to interfere with the decision which has already been given.

As these petitions raise substantial questions of law, I certify that this case is a fit one for appeal to the Supreme Court.

Bhandari, C.J.

Falshaw, J.

Falshaw, J.—I agree.

APPELLATE CIVIL

Before Kapur, J.

BACHAN SINGH AND OTHERS,—Appellants

versus

FIRM ARHAT RAM SINGH-BAKHTAWAR SINGH,
 Respondents

Execution Second Appeal No. 601 of 1955.

1956
 Aug., 31st

Execution of decree—Objections by Judgment-debtor—Objections partly allowed—Appeal by decree-holder against the order allowing objections—Death of decree-holder during appeal—Application by legal representatives to be substituted in place of decree-holder in the appeal—Whether necessary to obtain succession certificate in order to continue the appeal. Indian Succession Act (XXXIX of 1925)—Section 214. Code of Civil Procedure (V of 1908)—Sections 47 and 146.

K. S. a decree-holder applied for execution of his decree and attached some land belonging to the Judgment-debtor who filed objections to the attachment which were partly allowed. K. S. appealed to the District Judge against the order allowing the objections. During the pendency of the

appeal K. S. died. His legal representatives applied to continue the appeal. The District Judge dismissed the application on the ground that the appeal could not be continued without the legal representatives first obtaining a succession certificate.

Held, that on a decree-holder dying during the pendency of the Execution proceedings it is not necessary in order to enable his heirs to be substituted in his place to take out a succession certificate. Section 214 of the Indian Succession Act, has no application to such a case, and the appeal could be continued by the legal representatives.

Execution Second Appeal from the order of Shri I. M. Lall, District Judge, Ambala, dated the 12th May, 1955, affirming that of Shri Tilak Raj Handa, Sub-Judge, Rupar, dated the 18th June, 1955, dismissing the appeal.

H. S. DOABIA and C. L. LAKHANPAL, for Appellants

H. S. GUJRAL and INDAR SINGH, for Respondent.

JUDGMENT

KAPUR, J. This judgment will dispose of Execution Second Appeal No. 601 of 1955, and Execution Second Appeal No. 742 of 1955, which have been brought by the decree-holder and the judgment-debtor, respectively.

Kapur, J.

In Execution Second Appeal No. 601 of 1955, the sole point for consideration is whether section 214 of the Succession Act is applicable to the facts of the present case. A decree was passed against the defendant firm, Arhat Ram Singh Bakhtawar Singh, for a sum of money. Kirpal Singh judgment-creditor filed an application for execution against the judgment-debtor firm and attached some land. On objection being taken part of it was held to be ancestral and

Bachan Singh
and others
v.
Firm Arhat
Ram Singh-
Bakhtawar
Singh
Kapur, J.

the other non-ancestral and the decree was allowed to be executed against the non-ancestral portion. Against this order Kirpal Singh took an appeal to the District Judge and while the appeal was pending he died. His legal representatives applied to continue the appeal. The learned District Judge has dismissed the application on the ground that it cannot be proceeded with until and unless the legal representatives got a succession certificate under the Indian Succession Act. The relevant portion of section 214 is:—

“No Court shall.—

(a) * * * *

(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) * * *

(ii) * * *

(iii) a succession certificate granted under Part X and having the debt specified therein; or

(iv) a certificate granted under the Succession Act, 1889, or VII of 1889.”

Counsel for the decree-holder appellant has submitted that this section is not applicable to the appellant because he is not applying for the execution of the decree but is continuing an application which had already been filed by the deceased

decree-holder. He relies on two judgments of the Calcutta High Court, (1) *Mohamed Yusuf v. Abdur Rahim Bepari and others* (1), where it was held that section 4 of the Succession Certificate Act is no bar to execution proceedings instituted on a mortgage decree upon the application of the original mortgagee by reason of the original mortgagee having died during the pendency of the proceedings and his legal representatives who were being substituted in his place not having produced a succession certificate. This case was followed in another judgment of the Calcutta High Court in *Kashetra Mohan Paddar and others v. Azizullah Mea and others* (2), where it was held that on a decree-holder dying during the pendency of execution proceedings it is not necessary in order to enable his heirs to be substituted in his place to take out a succession certificate. In my opinion, and I say so with due respect to the opinion of the learned District Judge, that section 214 of the Succession Act has no application to the facts of this case, and I would, therefore, allow this appeal, set aside the order of the learned District Judge and remand the case to him for proceeding with the appeal in accordance with law.

Bachan Singh
and others
v.
Firm Arhat
Ram Singh-
Bakhtawar
Singh
Kapur, J.

In Execution Second Appeal No. 742 of 1955, the appellants are the judgment-debtors. They applied in appeal before the learned Judge for being allowed to adduce additional evidence under Order XLI, Rule 27, Civil Procedure Code, which was not allowed. Counsel for the appellant Mr. Harbans Singh Gujral submits that he made an application in the executing Court for time to produce a document which was wrongly disallowed. The learned Judge has gone into this matter and he was not prepared to allow additional evidence to be taken and I do not think that sitting in

(1) I.L.R. 26 Cal. 839
(2) A.I.R. 1920 Cal. 580

Bachan Singh and others
 v.
 Firm Arhat
 Ram Singh-
 Bakhtawar
 Singh
 Kapur, J.

second appeal I should interfere with the discretion of the learned Judge. I would, therefore, dismiss this appeal.

In the result, Execution Second Appeal No. 601 of 1955, is allowed and Execution Second Appeal No. 742 of 1955, is dismissed. Costs will abide the event.

The parties are directed to appear in the Court of the District Judge on the 8th October, 1956.

APPELLATE CRIMINAL

Before Falshaw and Kapur, JJ.

THE STATE,—Appellant

versus

TEJA SINGH,—Respondent

Criminal Appeal No. 405 of 1955.

1956 *Punjab Excise Act (I of 1914)—Section 61(1)(a)*
 “Lahan”—*Meaning of.*

September, 3rd

Held, that term “Lahan” means a mixture of any substance which, on fermentation is capable of producing alcohol, together with a fermenting agent of which there are many. It is the substance out of which alcohol is distilled and if the person who possesses any quantity of this substance has no licence of distilling alcohol, its possession is a criminal offence under the Excise Act, although “Lahan” may not itself be an intoxicating substance.

The State v. Sulakhan Singh (1), referred to.

State Appeal from the order of Shri Amar Singh, Magistrate, 1st Class, Rupar, District Ambala, dated the 18th March, 1955, convicting the respondent.

HAR PARSHAD, Assistant Advocate-General, for Appellant.

RAM SARUP and D. S. KANG, for Respondent.