

Karam Ali Vs. Halima and ors.

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SooperKanoon Citation : sooperkanoon.com/452691

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All686

Judge : Turner, Officiating C.J. and ;Pearson, J.

Appellant : Karam Ali

Respondent : Halima and ors.

Judgement :

1. The Munsif appears to think that obtaining a certificate is indispensable to the competency of an heir to apply for execution under Section 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 *Abidunissa Khatoon v. Amirunnissa Khatoon* I.L.R 2 Cal., 334.

