**LEGAL PROCESS FOR SUCCESSION**

**I. Succession Certificate**

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.

*Procuring a Succession Certificate*

A few important pointers for procuring a succession certificate are as follows:

* The beneficiary/ legal heir is required to approach a competent court and file a petition for a succession certificate.
* The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time 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 the succession certificate.
* The petition should mention important details such as the name of petitioner, relationship with the deceased, names of all heirs of the deceased, time, date and place of death. Along with the petition, death certificate and any other document that the court may require should also be attached.
* The court, after examining the petition, issues a notice to all concerned parties and also issues a notice in a newspaper and specifies a time frame (usually one and a half months) within which anyone who has objections may raise them. If no one contests the notice and the court is satisfied, it passes an order to issue a succession certificate to the petitioner.
* If there is more than one petitioner, then the court may jointly grant them a certificate but it will not grant more than one certificate for a single asset.
* 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 (i) to receive interest or dividends on the securities; or (ii) to negotiate or transfer the securities; or (iii) both to receive interest or dividends or negotiate or transfer the securities.
* 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.

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.

In the case of Muthia vs Ramnatham[[1]](#footnote-0), 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''.

**B. Legal Heirship Certificate**

*Purpose of a Legal Heirship Certificate*

A legal heirship certificate establishes the relationship of the heirs to the 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.

*Procedure for procuring 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.

*Documents to attach along with the application*

* Name of the deceased
* Death certificate original
* Service certificate issued by the head of the department/office in case of serving employee
* Ration card and Aadhar card
* Pensioner payment slip issued by the office of accountant general in case of pensioner
* Family members names and relationship
* Applicant’s signature
* Date of application
* Residential address
* An affidavit worth Rs 20 on a stamp paper

In Vandana Bhimrao Jadhav vs Inhabitant Of Mumbai[[2]](#footnote-1) The respondent in this particular case had not disclosed the names of the other petitioner nos. 2 to 4 as the legal heirs of the deceased when he filed a petition for issuance of legal heirship certificate. So, the court in this matter held that the petitioners are entitled to include their names in the legal heirship certificate issued by this Court in Petition No. 91 of 2009 as legal heirs issued under section 2 of the Bombay Regulation VIII of 1827 in favor of the respondent.

1. 1918 MWN 242 [↑](#footnote-ref-0)
2. MISC. PETITION NO. 110 OF 2011 [↑](#footnote-ref-1)