

(1922) 12 BOM CK 0004

In the Bombay High Court

Case No : Second Appeal No. 210 of 1922

Bhagubai Tukaram Jogdunde

APPELLANT

Vs

Appaji Sitaram Charathe

RESPONDENT

Date of Decision : 01-12-1922

Acts Referred:

Citation : AIR 1923 Bom 260 : (1923) 25 BOMLR 157

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—The plaintiff is the sister of one Bala Narayan who died while serving with the regiment of 121st Pioneers. He left a widow called Sugandha. Purporting to exercise her widow's rights she sold the plaintiff's property to the second defendant. The plaintiff's suit is to recover this property. The plaintiff mainly relies on the "Kindred Roll and Names of Heirs" appertaining to the deceased. A true copy has been produced signed by the Officer Commanding the Depot, and we are entitled to accept that as evidence of the Kindred Roll of the deceased. But the question really is whether by virtue of that document, or any other evidence in the case, the suit property has passed to the plaintiff. The trial Court held that the Kindred Roll was a will embodying the legal declaration of the intentions of the testator with respect to his property which he desired to be carried into effect after his death. The District Judge held that the document was not proved. I think there he was wrong. But he was right in refusing to accept the view of the Subordinate Judge that Exhibit 23 was a will. He then considered whether there was any evidence which proved an oral will of the deceased, and considered that the evidence of Husseinkha, the only witness on behalf of the plaintiff, was not sufficient to prove an oral will. Accordingly the decree of the trial Court was reversed and the suit was dismissed. It is quite clear that the Kindred Roll, whatever other effect it might have, cannot be treated as a will. At the most it is evidence that Bala made a declaration before the Military Authorities that Bhagu was his heir or was the person to whom his estate should be made over on behalf of the heir. It is not very clear for what

purpose the Kindred Roll is prepared except that the Military Authorities wish to know who are the next-of-kin in case the soldier dies. They want to know to whom the family pension should be paid, and to whom any of the effects of the deceased which may remain in their hands after his death should be handed over. The Military Authorities have nothing whatever to do with the landed property which a soldier may have, and I do not think that, even supposing a soldier informed the Military Authorities that he considered a certain person to be his heir, that statement would be taken as meaning that the soldier intended to make an oral will disposing of property which would not come into the hands of the Military Authorities after his death. The Kindred Roll, therefore, in my opinion, could only be used for a limited purpose. I do not think there is any evidence in this case that Bala made an oral will disposing of the suit property in favour of his heirs. The decree, therefore, of the District Judge dismissing the suit was correct and the appeal must be dismissed with costs