

(1979) 01 BOM CK 0051

In the Bombay High Court

Case No : Civil Revision Application No. 387 of 1975

Jyoti Singhai

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-01-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Succession Act, 1925 — Section 213, 57

Citation : (1979) MhLj 308

Hon'ble Judges : A.A. Ginwala, J

Bench : Single Bench

Advocate : K.A. Choube, for the Appellant; G.A. Paonikar and R.B. Masodkar, Asstt. Govt. Pleaders, for the Respondent

Final Decision : Allowed

Judgement

A.A. Ginwala, J.—Two fields bearing S. Nos. 10/2 and 10/2B situated in village Shivar in the district of Akola belonged to Padmabai widow of Rukhahsa Junankar. These fields were acquired by the State under the provisions of the Land Acquisition Act (hereinafter referred to as "the Acquisition Act") for the purposes of Punjabrao Krishi Vidyapith and an award was made in favour of Padmabai on 30th March 1971, awarding her certain compensation. Not being satisfied with the amount awarded to her, Padmabai asked for a reference u/s 18 of the Acquisition Act and consequently the matter was referred to the Civil Court and came before the Joint District Judge at Akola. When that reference was pending in the District Court, Padmabai made a will on 11th April 1974 under which she bequeathed some immoveable properties belonging to her to some persons other than the present applicant. However, by residuary clause in the will she bequeathed all other moveable and immoveable properties belonging to her to the present applicant. During pendency of the proceedings before the District Court, Padmabai expired on 19th June 1974. The applicant by her application dated 18th July 1974 applied for her name being brought on record in place of that of Padmabai. In this application the applicant claimed to be the legal

representative of Padmabai on the strength of the said will. The Learned Counsel on behalf of the non-applicant by his reply endorsed on this application stated that the State had no objection to bring the names of heirs of the deceased on record, but the right to claim compensation was denied in the absence of probate or Letters of Administration from the competent Court. By his order dated 7th February 1975 the learned Joint Judge directed applicant to obtain a probate within three months and stayed the proceedings for that period. It is against this order that the present revision application has been filed.

2. Mr. Choube, the Learned Counsel for the applicant, contended that it was not necessary for the applicant to obtain probate as directed by the learned Joint Judge, inasmuch as the will on which the applicant based her claim, was not covered by the provision of section 213 of the Indian Succession Act, 1925 (hereinafter referred to as "the Act"). Mr. Choube, relying on sub-section (2) of section 213, submitted that the will in question was not covered by clauses (a) and (b) of section 57 of the Act and hence it was a will of which it was not necessary to obtain probate under sub-section (1) of section 213. This contention of Mr. Choube must be upheld for the following reasons.

3. There is no dispute that Padmabai, the executant of the will, was a Hindu. Now sub-section (1) of section 213 of the Act provides that no right as executor or legatee can be established in any Court of justice, unless a Court of competent jurisdiction in India has granted probate of the will under which right is claimed or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed. It would thus appear that if an executor or legatee claims anything under a will, he has to obtain a probate or letter of administration, if he wants to establish his right in any Court of Justice. However, this general provision contained in sub-section (1) of section 213 is subject to certain exceptions which are laid down in sub-section (2) of that section. Sub-section (2) provides that section 213 shall not apply in case of wills made by Mohammadans but it shall apply only in case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57. For the purpose of this revision application it is not necessary to consider clause (ii) of sub-section (2) of section 213. It would, therefore, be clear that section 213 or for the matter of that sub-section (1) of section 213 will apply in the case of a will executed by a Hindu only if such a will is governed by the provisions of clauses (a) and (b) of section 57 of the Act. We have, therefore, to see if the will in question in this case is of any of the classes specified in clauses (a) and (b) of section 57 of the Act. Section 57 is in the following terms:

"57. The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply:

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of Bengal or within the local limits

of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such, wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such will or codicil.

Now clause (a) applies to the wills executed by Hindus amongst others on or after the first day of September 1870 within the territories mentioned therein. It would appear that clause (a) would apply to wills relating to moveable as well as immoveable properties situated within the territories mentioned in that clause, provided the will is executed by a Hindu, Buddhist, Sikh or Jaina after the first day of September 1870. Clause (b) governs wills executed by a Hindu, Buddhist, Sikh or Jaina on or after first day of September 1870 Outside the territories mentioned in clause (a) only if such a will relates to immoveable property situated within those territories. In other words, if a Hindu, Buddhist, Sikh or Jaina executes a will after the first day of September 1870 at a place outside the territories mentioned in clause (a) but in respect of immoveable property situated within those territories, then such wills would be governed by clause (b). However, if a Hindu, Buddhist, Sikh or Jaina makes a will after the first day of September 1870 outside those territories in respect of properties moveable or immoveable situated outside those territories, then obviously such a will would not be governed by clause (b). Such a will, it appears, would be governed by clause (c), if it is executed on or after the first day of January 1927. This in sum and substance appears to be the scheme of section 57 of the Act and particularly clauses (a) and (b) thereof.

4. Now there does not appear to be any dispute that the will has been executed at Akola which certainly and obviously is outside the territories and limits specified in clause (a) of section 57. Again as already stated above, the will has been executed on 11th April 1974, i.e. on or after the first day of January 1927. On these facts, therefore, there is no difficulty in holding that the present will is not at all governed by the provisions of either clause (a) or clause (b) of section 57 but would fall under the provisions of clause (c) of section 57. If that is so, this is a will which is not covered by clause (i) of sub-section (2) of section 213 of the Act and hence it will be outside the Purview of sub-section (1) of section 213. Consequently it would not be necessary for the applicant to obtain a probate of the will in order to establish her right under it as a legatee. In this connection reference may be had to the decisions in *Mt. Janki Bai Vs. Durga Prasad*, , *Shrimati Pevibai v. Motulal* A I R 1937 Sind 84 , AIR 1934 599 (Lahore) , *Ahmad vs. Ghisia*, 1945 Nag L J 289 : A I R 1945 Nag. 237 and *Ruprao v. Ramrao* 1952 Nag L J 86 : A I R 1952 Nag. 88 ,

5. In view of the discussion above it would appear that the learned Joint Judge was not right in asking applicant to produce the probate of the will when she was entitled to establish her right under the will without obtaining such a probate u/s 213 of the Act. The order passed by him on 7th February 1975, therefore, cannot be sustained, and has to be set aside.

6. The revision application is allowed and the rule is made absolute. The order passed by the lower Court on 7th February 1975 directing the applicant to obtain probate is hereby set aside. In the circumstances of the case there shall be no order as to costs.