

(1908) 01 CAL CK 0024

In the Calcutta High Court

Case No : Appeal from Original Decree No. 177 of 1906

Ram Moni Dasi

APPELLANT

Vs

Ram Gopal Shaha

RESPONDENT

Date of Decision : 31-01-1908

Acts Referred:

Citation : (1908) 01 CAL CK 0024

Judgement

1. The Indian law defines a Will to mean "the legal declaration of the intentions of a testator with respect to his property which he desires to be carried into effect after his death." (See sec. 3 of the Indian Succession Act) sec. 49 would indicate that such an instrument is revocable. We have to examine whether the instrument propounded in this case, the alleged Will, dated the 2nd February 1905, corresponding with 20th March 1311, gives directions as to the disposition of property subsequent to the death of the testator, and whether it is revocable in its character or not. The testator bequeathed a half share of his moveable and immoveable properties without specifying them in the document itself to his widow Rammoni and imposed a burden on Srimanta Saha to maintain the widow during her lifetime. The" document then directed that, after the death of the widow, her half share would go to Srimanta. The dispositions were to take effect after the death of the testator. They were also revocable according to the subsequent clause, inasmuch as the daughter of the executant might or might not be married to Srimanta. It is true that the document is of an ambiguous character, but it certainly contains directions regarding the executant's property after his death which, in certain circumstances, may be revoked.

2. It has been held over and over again in this Court and by the Judicial Committee that instruments not drawn by professional men should be construed liberally. One fact is clear that no property is specifically mentioned in the document, specially the immoveable property. It would not be effective as an instrument of transfer of immoveable property. Effect could be given to it only if it were a Will. We cannot, therefore, agree with the learned District Judge that the instrument is not a Will and probate cannot be granted of it. We remand the

case to the lower Court to deal with it according to law. Costs will abide the result. We assess the hearing fee at two gold mohurs.