

(1932) 08 BOM CK 0008
In the Bombay High Court
Case No : Second Appeal No. 299 of 1931

Ramgopal Hajarimal Marwadi	Vs	APPELLANT
Jaitunbai Yasinbhai		RESPONDENT

Date of Decision : 11-08-1932

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 28A
Succession Act, 1925 — Section 263

Citation : AIR 1933 Bom 77 : (1932) 34 BOMLR 1677

Hon'ble Judges : Patkar, J;Murphy, J

Bench : Division Bench

Judgement

Patkar, J.—In this case a probate was granted on January 15, 1920, to the appellants in respect of property worth Rs. 6,680, The appellants were appointed executors of the deceased testator by his will dated April 17, 1918, The present application was made by the respondent for revocation of the probate u/s 263 of the Indian Succession Act, XXXIX of 1925, on the allegation that the will was a forgery. The learned First Class Subordinate Judge, acting under the powers conferred by Section 28A of the Bombay Civil Courts Act, dismissed the application on the ground that in his opinion he was not satisfied that the will was a forgery.

2. On appeal, the learned Assistant Judge came to the conclusion that the will, Exhibit 141, was not a genuine will of the deceased Narsingdas, and, therefore, allowed the application and cancelled the probate already granted.

3. A preliminary point was raised before the learned Assistant Judge that the appeal did not lie to the Assistant Judge u/s 28A of the Bombay Civil Courts Act, 1869. Subsection (2) of Section 28A makes a provision with regard to appeals as follows:-

Every order made by a Subordinate Judge by virtue of the powers conferred upon him under Sub-section (7) shall be subject to appeal to the High Court or the District Court according as the amount or value of the subject matter

exceeds or does not exceed five thousand rupees.

4. The learned Assistant Judge held that property covered by the will was worth more than Rs. 5,000, and in the probate granted by the Court the property was valued at Rs. 6,680. But the learned Assistant Judge was of opinion that as the appellant was concerned with only one of the survey numbers out of the property covered by the will, which was worth Rs. 1,600, she was entitled to put the valuation on the property to the extent to which her interest was affected by the grant of the probate. The value of the subject-matter of a probate application is the estate which is the subject of the probate application. In *Laxmi v. Aba* ILR (1808) Bom. 634 : 10 Bom. L.R. 924 where the precise point decided was that in so far as the provisions of the Probate and Administration Act are inconsistent with the amendments introduced into the Bombay Civil Courts Act, the provisions of the first mentioned Act must be taken to have been impliedly repealed, it was also incidentally remarked that the value of the subject-matter represented the value of the estate which was the subject of the probate application. u/s 273 of the Indian Succession Act of 1925, probate or letters of administration shall have effect over all the property and estate, moveable or immovable, of the deceased, throughout the province in which the same is or are granted. If the probate has the effect over all the property comprised in the probate, the subject-matter of an application to revoke the probate would extend to the whole property covered by the probate. It is difficult to divide the subject-matter of such an application in proportion to the interest acquired by the applicant. There is no provision for a limited revocation of the probate especially when it is sought on the ground that the will is forged. Though according to the decision in *Lakeshman Bhatkar v. Babaji Bhatkar* ILR (1883) Bom. 31 the subject-matter of a claim within the meaning of Section 25 of the Bombay Civil Courts Act, XIV of 1869, is the specific thing sought by the plaintiff, yet it is clear that in an application for cancellation of the probate on the ground that the will is forged the specific thing sought by the plaintiff is not divisible as in a partition suit.

5. We think, therefore, that the subject-matter of the application, which aimed at and would result in the cancellation of the whole probate, extended over the whole property comprised in the probate which was of the value of Rs. 6,680, and therefore, exceeded Rs. 5,000, and the appeal would lie not to the District Court but to the High Court. No other point was raised in this appeal.

6. We think, therefore, that the decree of the lower Court must be set aside on the ground that it had no jurisdiction to hear the appeal, and we must direct the District Judge to return the appeal for presentation to the proper Court. The appellants to get the costs of this appeal from the respondent.

7. *Murphy, J.* The only question we have to decide is the value of the subject-matter of an application to revoke the probate of a will, for on this depends the answer to the question whether the Assistant Judge, who revoked the probate, had jurisdiction to do so, and to hear the appeal from the decision of the First Class Subordinate Judge, who refused the application.

8. The estate was that of a religious mendicant, the executors had applied for probate, and it was originally granted them to the value of Rs. 6,680. The applicant, now respondent, was a purchaser of one of the properties covered by the will, from one Raghunathdas, who claiming to be the deceased's " chela " and heir sold it to her husband for Rs. 1,600. Under the will, the property was not vested in this person, and the applicant valued her claim at Rs., 1,600, which was the price paid for the land. But it is evident that the probate was granted as a whole, and there is no provision for a limited revocation in the Act, and can hardly be one in the case of a revocation on the ground, of forgery. If the probate was to be revoked, it would have so to be as a whole, and the subject-matter in such an application must, therefore, be decided by the value for which the probate was granted.

9. I agree that the learned Assistant Judge had no jurisdiction to hear the appeal, and that he should return the memorandum of appeal for presentation to the proper Court.