
(1994) 09 BOM CK 0071

In the Bombay High Court

Case No : L.P.A. No. 1 of 1991 in First Appeal No. 554 of 1977

Vimal

APPELLANT

Vs

Ramkrishna Marya Patil and Others

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Succession Act, 1925 — Section 213, 213(1), 213(2), 57

Citation : (1994) 09 BOM CK 0071

Hon'ble Judges : A.M. Bhattacharjee, C.J.;A.P. Shah, J

Bench : Division Bench

Advocate : S.M. Mhamane, for the Appellant; M.B. Badkar, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Bhattacharjee, C.J.—Heard learned Counsel for the Appellants. We did not call upon the learned Counsel for the Respondent No. 1 to make his submission.

2. Mr. Mhamane, learned Counsel for the Appellants, has assailed the judgment of the learned single Judge on two grounds only. Firstly, Mr. Mhamane urges that the learned Judge ought to have held that the will has not been proved to be genuine and secondly it has been urged that the Defendants cannot claim any title on the basis of the will without obtaining probate of the will.

3. We have gone through the judgment of the learned single Judge and we have no hesitation to state that the learned Single Judge has appreciated the evidence on record in proper manner. It has been urged before us that there was no good reason for the testator to bequeath property to his brothers i.e. Defendants Nos. 1 to 5. We have noted that appreciable portion of property was bequeathed to the deceased's wife and the daughter. The wife has been given about four acres of the land and dwelling house to have life interest therein and the remainder was given to the daughter; while about seven acres of land were given to brothers-defendants Nos. 1 and 3 jointly. This division of property cannot raise any suspicion whatsoever. It has been urged that the Sub Registrar, who has been

examined to prove the genuineness of the will, was examined after a long gap of about four years and that should make his evidence unreliable. We are not in a position to agree with such blanket proposition. Since we are in agreement with all the reasons stated by the learned Judge to come to his conclusion that the will is genuine, we need not repeat all of them. We are fully satisfied that the learned Judge recorded a correct finding that the will was genuine, executed by the testator with due testamentary capacity and in a manner required by law.

4. That takes us to second contention, namely, that the claim of the Defendants, who are claiming title, cannot be taken into consideration without the will being probated. Reliance has been placed on the decision of the Supreme Court in the case of *Mrs. Hem Nolini Judah (since deceased) and after her Legal Representative Mr. Marlean Wilkinson Vs. Isolyne Sarojbhashini Bose and Others*, wherein it has no doubt been observed that unless the will is probated, no claim thereunder can be proved or otherwise recognised by a Court of law. True, that is the law u/s 213(1) of the Succession Act, which however, clearly points out in Sub-section (2) of the said Act, that if the will is one, which comes within the provisions of Clauses (a) and (b) of Section 57 of the Succession Act, the same need not be probated and can be acted upon without being probated. The decision of the Supreme Court, therefore, will not apply to this case where the parties were Christina. Reliance has also been placed on the decision of the Calcutta High Court in the case of *Jogendranath Banerjee Vs. Makhan Lal Banerjee and Others*, wherein also it has been observed that a will, unless duly probated, cannot be taken into consideration in a Court of law. As has been noted by the learned Judge in his judgment the view of this Court, as will appear from the decision in the case of *Jyoti Jagdish v. State of Maharashtra* 1979 Mah LJ 308, is clear to the effect that if the will is executed outside the original jurisdiction of this High Court or does not relate to property within such jurisdiction, Section 213 of the Succession Act would not apply and probate is not necessary in respect of a will. This also appears to be the view of the Nagpur High Court in AIR 1952 242 (Nagpur) ; *Ahemad v. Ghisia* ILR 1945 Nag. 562 and *Damodar Lal v. Gopinath* AIR 1956 Nag. 209. In fact, that is the only view possible and as far as we have accepted fair and consistent view of all the High Court to our knowledge, as neither the will in this case was executed within the territories in the original jurisdiction, nor it relates to property herein, if probate is not obtained. We are accordingly of the opinion that, the learned Judge was right in holding that the Defendants have successfully proved that the will executed by the deceased is genuine.

5. All the contentions are thus failed and the appeal accordingly also fails. We accordingly dismiss the appeal, but, in the circumstances, we make no order as to costs.