

APPELLATE CIVIL.

Before Jai Lal J.

SOHAN SINGH AND OTHERS (PLAINTIFFS)

Appellants

versus

BHAG SINGH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 1278 of 1930.

Indian Succession Act, XXXIX of 1925, Sections 57, 213: Will by Hindus of the Punjab—whether can be given effect to—without obtaining probate.

Held, that Section 213 of the Indian Succession Act does not apply to wills made by Hindus of the Punjab and relating to immovable property situate in the Punjab. It is, therefore, not necessary to obtain probate of such a will before claiming or establishing any right under it.

Second Appeal from the decree of R. S. Lala Shibbu Mal, District Judge, Gurdaspur, dated the 9th April, 1930, reversing that of Lala Ishar Dass, Subordinate Judge, 4th Class, Batala, dated the 23rd December, 1929, and dismissing the plaintiffs' suit.

S. L. PURI, for Appellants.

PARKASH CHAND, for Respondents.

JAI LAL J.

JAI LAL J.—The dispute in this second appeal relates to the occupancy rights of one Mohin Singh, who was sentenced to death on a charge of murder. Before the sentence was carried out, he made a will in jail, bequeathing the occupancy rights in dispute in favour of the appellants. The respondents, however, who are also distant relations of Mohin Singh, or claimed to be so, took possession of the occupancy rights. The learned District Judge has held that the will was executed by Mohin Singh and that if it be

given effect to, the appellants would be entitled to succeed; but he was of opinion that section 213, Indian Succession Act, precluded him from giving effect to the will and consequently setting aside the decree of the trial Court in favour of the appellants has dismissed the suit.

On this appeal the only question raised is whether under section 213 of the Indian Succession Act it was necessary for the appellants to take out probate of the will or letters of administration with the will attached before establishing their right as legatees under the will. Now section 213 provides that "No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in British India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed." In clause (2) of this section, however, it is provided that it shall not apply in the case of wills made by Mohammadans, and shall only apply in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes mentioned in clauses (a) and (b) of section 57. Clause (a) of section 57 relates to 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. The will in question was made in Gurdaspur and relates to property which is situated in Gurdaspur. It is obvious, therefore, that it is not covered by clause (a) of section

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57. Clause (b) of that section concerns wills and codicils made by persons belonging to the above-mentioned religions made outside the territories and limits mentioned in clause (a) but so far as they relate to immovable property situate within those territories or limits. Therefore, this second clause will cover wills executed by Hindus, Buddhists, Sikhs or Jainas which have been executed in the Punjab but relate to immovable property situate within the territories or limits specified in clause (a). Section 213, therefore, does not apply to wills made by Hindus of the Punjab and relating to immovable property situate in the Punjab. The view of the learned District Judge, therefore, that no right under the will in question could be claimed or established by the plaintiff as a legatee in any Court of Justice is based on an erroneous interpretation of section 213 of the Indian Succession Act and Mr. Parkash Chandar, counsel for the respondents, had ultimately to concede that this is so.

I accept this appeal, set aside the decree of the District Judge and restore that of the trial Judge with costs throughout.

P. S.

Appeal accepted.