

APPELLATE CIVIL.

1922.

December 1.*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.*

BHAGUBAI KOM TUKARAM JOGDUNDE (ORIGINAL PLAINTIFF), APPELLANT *v* APPAJI SITARAM CHARATHE (ORIGINAL DEFENDANT), RESPONDENT².

Will—Soldier's will—Entry in a Kindred Roll, whether it can be construed as a will.

An entry regarding the disposal of a soldier's estate after his death in a Kindred Roll kept by Military authorities cannot be construed as a will.

SECOND appeal against the decision of C. V. Vernon, District Judge of Ahmednagar, reversing the decree passed by D. M. Mehta, Subordinate Judge, at Ahmednagar.

Suit for declaration.

One Bala was a military sepoy, who was serving with the regiment of 121st Pioneers. While on war duty, the Military authorities kept a Kindred Roll of Bala. It was called "Kindred Roll and Names of Heirs" and contained several entries showing the nearest relations of Bala, names of heirs to estate and heirs to family pension. The pertinent entry in the Kindred Roll and Name of Heirs (Exhibit 23) ran as under: "Name of heir to estate and if desired name of person to whom estate should be made over on behalf of heir:—Bhagubai, sister."

Bala died while in Military service. After his death his lands were taken possession of by his widow Sugandha (defendant No. 1) who sold them to Appaji (defendant No. 2) on 23rd July 1919.

On September 23rd, 1919, Bhagubai sued for a declaration that the sale deed passed by Sugandha was null and void.

² Second Appeal No. 210 of 1922.

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The Subordinate Judge held that the "Kindred Roll and Names of Heirs" showed that Bala appointed Bhagubai as heir to his estate and therefore it was a will embodying the legal declarations of the intentions of the testator with respect to his property which he desired to be carried into effect after his death. He therefore decreed the suit.

The decree was on appeal reversed by the District Judge who was of opinion that Exhibit 23 could not be held to be proved and even if proved could not be held to be a will.

Plaintiff appealed to the High Court.

Y. B. Bhandarkar, for the appellant.—The Kindred Roll is a public document, being the act of a public officer. It is therefore proved by the production of the certified copy. The Kindred Roll signed by Bala can be construed as a will. It embodied the legal declaration of the intention of Bala that after his death, his sister should get his estate. It was expressly stated in the column headed "Name of heir to estate and if desired name of person to whom estate should be made over on behalf of heir" that Bhagubai should be his heir and this declaration amounts to a will. Even supposing that the entry in the Kindred Roll cannot be construed as a will there was an oral declaration made by Bala in the presence of another sepoy Husseinkha that his estate should go after his death to his sister Bhagubai and the entry in the Kindred Roll can be used in support of this oral declaration. In the next column the name of the heir to the family pension is ascertained and in the present column that of the heir of the estate. In the precarious life of the soldier he might get killed on any day and the Military authorities must therefore have thought it proper to give him an opportunity to express his will in case he died.

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J. G. Rele, for the respondent.—I submit, first, that the Kindred Roll cannot be accepted as evidence. It was not properly proved, as the officer who signed the Kindred Roll was not called nor could it be admitted as a public document under section 74 of the Indian Evidence Act. It was not an act of sovereign authority, or of official bodies and tribunals, or of public officers, legislative, judicial and executive, within the meaning of the section.

Secondly, that the entry in a Kindred Roll cannot be construed as a will. A Kindred Roll is kept by Military authorities for the purpose of ascertaining a soldier's heirs in case he dies, in order that they may know to whom they should pay the estate of the deceased which may remain in their hands. It is meant for facilitating the disposal of moveables belonging to a soldier and found by Military authorities and it cannot have the effect of disposing of a soldier's landed property with which the Military authorities have nothing to do.

Moreover, the entry in effect was that Bhagubai should hold the estate on behalf of the heir and the heir to Bala's property was Sugandha, his widow. Therefore the entry cannot be construed as a will in Bhagu's favour.

Thirdly, the lower Court has disbelieved Hussein-kha's evidence regarding the oral will. This is a finding of fact and cannot be disturbed in second appeal.

MACLEOD, C. J.:—The plaintiff is the sister of one Bala Narayan who died while serving with the regiment of 121st Pioneers. He left a widow called Sugandha. Purporting to exercise her widow's rights she sold the plaintiff property to the 2nd defendant. The plaintiff's suit is to recover this property. The plaintiff mainly relies on the "Kindred Roll and Names of Heirs"

appertaining to the deceased. A true copy has been produced signed by the officer commanding the Depot, and we are entitled to accept that as evidence of the Kindred Roll of the deceased. But the question really is whether by virtue of that document, or any other evidence in the case, the suit property has passed to the plaintiff. The trial Court held that the Kindred Roll was a will embodying the legal declaration of the intentions of the testator with respect to his property which he desired to be carried into effect after his death. The District Judge held that the document was not proved. I think there he was wrong. But he was right in refusing to accept the view of the Subordinate Judge that Exhibit 23 was a will. He then considered whether there was any evidence which proved an oral will of the deceased, and considered that the evidence of Husseinkha, the only witness on behalf of the plaintiff, was not sufficient to prove an oral will. Accordingly the decree of the trial Court was reversed and the suit was dismissed. It is quite clear that the Kindred Roll, whatever other effect it might have, cannot be treated as a will. At the most it is evidence that Bala made a declaration before the Military Authorities that Bhagu was his heir or was the person to whom his estate should be made over on behalf of the heir. It is not very clear for what purpose the Kindred Roll is prepared except that the Military Authorities wish to know who are the next-of-kin in case the soldier dies. They want to know to whom the family pension should be paid, and to whom any of the effects of the deceased which may remain in their hands after his death should be handed over. The Military Authorities have nothing whatever to do with the landed property which a soldier may have, and I do not think that, even supposing a soldier informed the Military Authorities that he considered a certain

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person to be his heir, that statement would be taken as meaning that the soldier intended to make an oral will disposing of property which would not come into the hands of the Military Authorities after his death. The Kindred Roll, therefore, in my opinion could only be used for a limited purpose. I do not think there is any evidence in this case that Bala made an oral will disposing of the suit property in favour of his heirs. The decree, therefore, of the District Judge dismissing the suit was correct and the appeal must be dismissed with costs.

Decree confirmed.

J. G. R.

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Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

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December 15.

GANGADHAR NARAYAN PANDIT JAMNIS (ORIGINAL PLAINTIFF),
APPELLANT v. IBRAHIM VALAD BAVA NAKHAVA DINGANKAR
(ORIGINAL DEFENDANT), RESPONDENT².

Hindu law—Succession—Right of divided sons and grandsons of last male owner to succeed to his divided property—Succession per stirpes.

The right of divided sons, grandsons and great-grandsons of the last male owner to succeed to his divided property, is the same as in the case of undivided family property.

Marudayi v. Doraisami Karambian⁽¹⁾, followed.

SECOND appeal against the decision of C. C. Dutt, Acting District Judge of Ratnagiri, modifying the decree passed by B. M. Butti, Subordinate Judge at Deorukh.

Suit to recover Inam dues and Khoti Faida.

² Second Appeal No. 875 of 1918.

⁽¹⁾ (1907) 30 Mad. 348.