

1893
 NOV. 21.
 APPEL-
 LATE
 CIVIL.
 18 B. 748.

18 B. 748.

[748] APPELLATE CIVIL.

Before Mr. Justice Parsons, and Mr. Justice Candy.

JAVERMAL (*Original Applicant*), *Appellant v. THE NAZIR OF THE*
 DISTRICT COURT OF POONA (*Opponent*), *Respondent.*

[21st November, 1893.]

Appeal—Reg. VIII of 1827—Order refusing certificate of heirship appealable—Succession Certificate Act (VII of 1889), s. 28—Practice.

An appeal lies from the order of a District Judge refusing to grant a certificate of heirship under Reg. VIII of 1827 by virtue of the provisions of s. 28 of the Succession Certificate Act (VII of 1889).

[F., 19 B. 399,(400).]

APPEAL from the decision of W. H. Crowe, District Judge of Poona, in Miscellaneous Application No. 132 of 1892.

The appellant Javermal Bahiravdas applied under Reg. VIII of 1827 for a certificate of heirship to one Hakamehand Parashram, deceased, alleging that he was the sole heir and legal representative of the deceased.

This application was opposed by Dhondai, who contended that the applicant was not the heir of the deceased.

The District Judge refused the application and passed the following order:—

“Read proceedings in Miscellaneous Application No. 269 of 1869. The certificate prayed for is refused.”

Against this order the applicant appealed to the High Court.

Mahadeo Chinnaji Apte, for the respondent:—There is a preliminary objection to the hearing of the appeal. The lower Court's order refusing to grant a certificate of heirship is not appealable under Reg. VIII of 1827.

Daji Abaji Khare (with him *B. N. Bhajekar*), for the appellant:—Under s. 19 of the Act VII of 1889, an appeal lies from an order of the District Judge refusing a certificate under the Act. The provisions of s. 19 of the Act are expressly made applicable by s. 28 to applications for certificates under Reg. VIII of 1827. An appeal, therefore, lies from the lower Court's order in the present case. The lower Court has not given any reasons for refusing the certificate applied for. Its judgment is not, therefore, according to law. Moreover, the [749] evidence recorded in a different proceeding, to which the lower Court refers, is inadmissible in the present case.

JUDGMENT.

PARSONS, J.—We think that an appeal lies from the order of the District Court refusing to grant a certificate of heirship under Reg. VIII of 1827 by virtue of the provisions of s. 28 of the Succession Certificate Act, 1889—*Pitamber v. Ishvar* (1).

We are unable to accept the decision of the District Judge, as he has given no reason whatever for his refusal to grant the certificate applied for.

He records that he has read the proceedings in Miscellaneous Application No. 269 of 1869. These proceedings were not sent up with

the record to this Court, but we have been supplied by the pleaders with certified copies of them, and with reference thereto we think it right to remark that the evidence there recorded cannot properly be used as evidence in this case.

We reverse the order of the District Judge and remand the case for a decision according to law,

Costs to abide the result.

Order reversed.

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APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

BAROT PARSHOTAM KALU (*Applicant*), *Appellant v.* BAIMULI
(*Opponent*), *Respondent*.* [21st November, 1893.]

Probate—Will—Will by a Hindu widow in respect of property inherited from her deceased husband—Invalid will.

A Court is not justified in refusing to grant probate of a will because the testator had no power to dispose of some or even all of the property he purported to deal with.

[F., 26 B. 792 (797)=4 Bom.L.R. 637; 2 P.L.R. 1902=7 P.R. 1902; Appl., 19 A. 458 (462); R., 28 B. 644=6 Bom.L.R. 966 (973); 34 B. 589=12 Bom. L.R. 694 =7 Ind. Cas. 944; 10 Ind. Cas. 130=141 P.L.R. 1911.]

APPEAL from the order of G. McCorkell, Esquire, District Judge of Ahmedabad, in Miscellaneous Case No. 18 of 1893.

One Bai Amba, widow of Barot Bhagwan Jetha, made a will, disposing of all the property, moveable as well as immoveable, which she had inherited from her deceased husband.

[750] On Bai Amba's death, the appellants, who were appointed executors under her will, applied for probate under Act V of 1881.

This application was opposed by the respondent, a sister of the deceased's husband, on the ground (1) that the will was a forgery; (2) that it was invalid, as the deceased was not competent to dispose by will of property inherited by her from her husband.

The District Judge on the authority of *Gadadhar Bhat v. Chandrabhagabai* (1) held that the will was invalid. He, therefore, rejected the application, and refused probate.

Against this order the present appeal was preferred to the High Court.

Goverdhanram M. Tripathi, for appellant.—The District Judge was wrong in refusing to grant probate. The bequests in the will may be invalid, but that is not a reason why the will should not be admitted to probate—*Hormusji v. Bai Dhanbaiji* (1).

Ganpat S. Rao, for respondent.—The will of which probate is sought is absolutely null and void. The testatrix had no power to bequeath either the moveable or immoveable property which she had inherited from her husband—*Gadadhar Bhat v. Chandrabhagabai* (2). The will should,

* Appeal No. 77 of 1893.

(1) 12 B. 164.

(2) 17 B. 690.