

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.

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therefore, be treated as a nullity and ought not to be admitted to probate—*Anmoda Sundari Dabi v. Jugutmoni Dabi* (1). See also Williams on Executors, p. 53.

JUDGMENT.

PARSONS, J.—The District Judge was wrong in refusing to grant probate because the testatrix had no power to dispose of some or even all of the property she purported to dispose of. See *Hormusji v. Bai Dhanbaiji* (2). We, therefore, reverse his order and direct that he hear and dispose of the application according to law.

Costs to abide the result.

Order reversed.

18 B. 751.

[751] CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Candy.

QUEEN-EMPRESS *v.* DANSANG DADA.* [22nd November, 1893.]

Criminal Procedure Code (Act X of 1882), s. 423, cl. (b)—Sentence—Alteration of sentence in appeal—Appellate Court's power to alter a sentence of fine into one of imprisonment.

A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment.

[F., L.B.R. (1893—1900) 423 (425); R., 18 A. 301 (302).]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882) under the revisional jurisdiction of the High Court.

The accused Dansang Dada and six others were convicted by the First Class Magistrate of Dhandhuka of the offence of voluntarily causing hurt under s. 323 of the Indian Penal Code (XLV of 1860). They were sentenced each to pay a fine of Rs. 51, or in default to suffer rigorous imprisonment for one month and fifteen days. They were also ordered to execute a bond for Rs. 100 for keeping the peace for a period of two years under s. 106 of the Code of Criminal Procedure (Act X of 1882).

On appeal the Sessions Judge upheld the convictions, but with respect to the sentences he passed the following order:—

“The offence is not one which, in my opinion, can be properly punished by a pecuniary fine. I, therefore, alter the sentence in each case from a fine of Rs. 51 to rigorous imprisonment for one month, leaving the order as to surety bonds unaltered.”

Against this order the accused made the present application under the revisional jurisdiction of the High Court, contending that the Sessions Judge's order for alteration of the sentence in appeal was illegal, as it amounted to an enhancement of the sentence.

Branson (with him *Ganpat Sadashiv Rao*), for accused.

Kalabhai Lallubhai, for complainant.

* Criminal Revision No. 327 of 1893.