

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

1895.

August 6.

BA'PUJI JAGANNA' TH AND ANOTHER (ORIGINAL APPLICANTS),
APPELLANTS.*

*Will—Execution—Attestation by two witnesses—Indian Succession Act (X of 1865),
Sec. 50—Hindu Wills Act (XXI of 1870), Sec. 2, Cls. (a) and (b)(1).*

The Hindu Wills Act (XXI of 1870) applies section 50 of the Indian Succession Act (X of 1865) to those wills only that are mentioned in section 2, clauses (a) and (b), of the former Act.

APPEAL from the decision of G. McCorkell, District Judge of Ahmedabad, in the matter of an application for probate.

Bápuji Jagannáth and Govindlál Kasandás applied to the District Court at Ahmedabad for probate of a will executed on the 15th June, 1892, by one Harjivandás Parshotamdas, who died on the 3rd November, 1894.

Citations were duly issued to the persons interested in the property of the deceased, but no caveats were entered.

The Judge rejected the application on the ground that the will was not attested by two witnesses, as required by section 50 of the Indian Succession Act (X of 1865).

In his judgment he said :—

“Three witnesses have been examined, and they depose that the will propounded is entirely in the handwriting of the deceased testator and is attested by one witness only.

* * * * *

“Section 50 of the Indian Succession Act requires that the will shall be attested by two or more witnesses.

“Before the passing of the Hindu Wills Act no particular formalities were required, and it was not even necessary that a will should be signed and attested. In Bombay

* Appeal No. 92 of 1895.

(1) Section 2 of the Hindu Wills Act (XXI of 1870) is as follows :—

2. The following portions of the Indian Succession Act, 1865, namely, sections 43, 48, 49, 50, 51, 55 and 57 to 77 (both inclusive) shall notwithstanding anything contained in section 381 of the said Act, apply—

(a) to all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situated within those territories or limits.

a nuncupative will made in 1871 after the Hindu Wills Act came into force was held to be valid—*Bhugavan Dulabh v. Kald Shankar*, I. L. R., 1 Bom., 641.

“In the present instance, however, the testator has made an attempt, but an incomplete one, to carry out the provisions of the law and has failed. In *Fernandez v. Alves*, I. L. R., 3 Bom., 32, it was held that the actual signature of at least two witnesses must appear on the face of the will. This ruling was followed in *Nitye Gopal Sircar v. Nagendranath Mitter*, I. L. R., 11 Calc., 429.”

The applicants appealed.

Notice of the appeal was issued to the Judge, and the record and proceedings were sent for.

Bhāshanker Nānābhai appeared for the appellants (original applicants):—The Hindu Wills Act (XXI of 1870) makes the Succession Act applicable only to Hindu wills (1) executed within certain local limits or (2) relating to immoveable property within those limits. This will does not fall within either class and, therefore, section 50 of the Succession Act does not apply. The will is, therefore, valid although not attested by two witnesses.

PARSONS, J.:—The Hindu Wills Act (XXI of 1870) applies section 50 of the Indian Succession Act to those wills only that are mentioned in section 2, clauses (a) and (b) of the former Act. The will in question is not such a will. We reverse the order of the District Judge and remand the application to be disposed of according to law.

Order reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

MOTA'BHAI MOTILAL, PLAINTIFF, v. THE SURAT CITY MUNICIPALITY AND ANOTHER, DEFENDANTS.*

Practice—Procedure—Amendment of plaint—Original form of plaint the test of jurisdiction.

A plaint praying for a declaration that a certain tax was illegal and also for damages for illegal entry into the plaintiff's house was presented to the Court of the First Class Subordinate Judge of Surat. The Judge amended the plaint by striking out the portion “regarding the reliefs other than the relief for damages,” and then holding that the claim for damages would lie only in the Small Cause Court, returned the plaint for presentation in that Court.

* Civil Reference, No. 11 of 1895.

1895.

BĀPUJI
JAGANNĀTH.

1895.

August 15.