

1910.

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steps for that purpose, as required by law, have been taken, and we are asked to set aside the compromise on a ground raised for the first time before us while we are concerned with only an appeal. The lower Court was not asked to determine whether it had been misled in the way that it is said to have been in consequence of the alleged want of authority in the appellant's pleader to effect the compromise.

On the question of interest, it is entirely a matter of discretion and we do not think there is any reason in law or equity to interfere with the Court's award. The decree is confirmed with costs, without prejudice to the right, if any, of the appellant to have the compromise set aside on the ground of fraud.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1910.
April 4.

NARAYAN SHRIDHAR DATE (ORIGINAL DEFENDANT), APPELLANT, v.
PANDURANG BAPUJI DATE (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Wills Act (XXI of 1870), sections 2 and 5—Indian Succession Act (X of 1865), section 187—Administrator-General's Act (II of 1874), section 36—Will made in Bombay—Property worth less than Rs. 1,000—Probate—Administrator-General's certificate.

A will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by section 187 of the Indian Succession Act (X of 1865) which is incorporated in the Hindu Wills Act (XXI of 1870).

The provision of the Administrator-General's Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of section 187 of the Indian Succession Act (X of 1865).

SECOND appeal from the decision of S. S. Wagle, First Class Subordinate Judge of Thána, with Appellate Powers, confirming

* Second Appeal No. 558 of 1909.

the decree of D. D. Cooper, Second Class Subordinate Judge of Panvel.

One Radhabai, a Hindu widow, resided at Panvel in the Thána District for several years and was possessed of some moveable and immoveable property at that place. On the 1st September 1897, she made a will in favour of Narayan Shridhar Date in whose house she resided at Panvel. Subsequently she set out on a pilgrimage to holy places and on her way back to Panvel she put up with her brother Pandurang Bapuji Date at Bombay. While living with her brother at Bombay, Radhabai became ill and died on the 25th September 1903 after having made a will, dated the 23rd September 1903. Under the will she bequeathed her property to her brother the said Pandurang Bapuji Date. As the property comprised in the will was less than Rs. 1,000 in value, the legatee applied to the Administrator-General of Bombay for a certificate of administration under section 36 of the Administrator-General's Act (II of 1874). The Administrator-General held the necessary inquiry and granted a certificate to Pandurang Bapuji Date, the legatee, on the 16th December 1903. Subsequently the said Narayan Shridhar Date relying upon a certified copy of the will made in his favour by the deceased Radhabai on the 1st September 1897 applied to the Administrator-General to withdraw the certificate granted to Pandurang Bapuji Date, and the Administrator-General on the 25th April 1905 refused to withdraw the grant.

On the strength of the certificate granted by the Administrator-General, Pandurang Bapuji Date filed a suit against the said Narayan Shridhar Date for the recovery of Radhabai's assets, in his possession.

The defendant contended *inter alia* that the plaintiff had not obtained probate of Radhabai's will, that the plaintiff derived no title under the said will and that he, the defendant, was the sole legatee under Radhabai's will, dated the 1st September 1897.

The Subordinate Judge found that under the certificate granted by the Administrator-General the plaintiff was entitled to recover the whole of Radhabai's property in the defendant's possession and he passed the decree accordingly.

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The defendant having appealed, the District Judge remanded the case for the purpose of recording evidence in support of the will relied on by the plaintiff. The Subordinate Judge, thereupon, sent for the will from the office of the Administrator-General and having recorded evidence of the attesting witnesses found that the plaintiff had proved the due execution of the will and passed the same decree as before.

On appeal by the defendant the Appellate Court found that the will was duly proved and that the plaintiff was entitled to sue without obtaining probate. The decree of the first Court was, therefore, confirmed.

The defendant preferred a second appeal.

M. V. Bhat for the appellant (defendant):—Radhabai made the will in Bombay, therefore, it is governed by the Hindu Wills Act. Under section 2 of that Act, section 187 of the Indian Succession Act is incorporated in it. Section 187 of the Indian Succession Act is imperative. Under that section it was necessary for the plaintiff to obtain probate to establish his right under the will. The certificate granted by the Administrator-General is of no avail. The plaintiff's suit must therefore fail. The lower Court has relied upon the decision in *Shaik Moosa v. Shaik Essa*⁽¹⁾. But the parties to that suit were Mahomedans who are not governed by the Hindu Wills Act.

G. B. Rele for the respondent (plaintiff):—The property comprised in the will being less than Rs. 1,000 in value we were entitled to obtain a certificate of administration under section 36 of the Administrator-General's Act. Section 5 of the Hindu Wills Act exempts the Administrator-General from the operation of that Act. Further the certificate granted by the Administrator-General has universal application. It was, therefore, not necessary for us to obtain probate. The certificate of the Administrator-General gives us title to the property comprised in the will.

Bhat in reply.

(1) (1884) 8 Bom. 241.

SCOTT, C. J.:—The only question that we have to decide in this case is whether the certificate of the Administrator-General granted to the plaintiff entitles him to sue for possession of the plaint property without taking out probate of the will under which he claimed as legatee—a will which was made in Bombay and is therefore subject to the provisions of the Hindu Wills Act.

If the certificate of the Administrator-General did not entitle him to sue without taking out probate he would be bound by section 187 of the Indian Succession Act which is incorporated in the Hindu Wills Act to take out probate before he could establish his right as a legatee.

The certificate of the Administrator-General was granted under section 36 of the Administrator-General's Act which states that in cases where the Administrator-General is satisfied that the assests do not exceed one thousand rupees in value, he may, if he thinks fit, if "requested to do so by writing, under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person claiming otherwise than as a creditor, to be entitled to a share of such assests, certificates under his hand, entitling the claimant to receive the property therein mentioned, belonging to the estate of the deceased, for value not exceeding in the whole one thousand rupees."

That provision, we think, implies that the certificate when granted will as a matter of law entitle the claimant to receive the property. That that provision of the Administrator-General's Act is not affected by the incorporation in the Hindu Wills Act of the section 187 of the Succession Act, is clear from section 5 of the Hindu Wills Act which provides that "Nothing contained in this Act shall affect the rights, duties and privileges of the Administrators-General of Bengal, Madras and Bombay, respectively."

The plaintiff therefore was entitled to maintain this suit. We confirm the decree of the lower Court and dismiss the appeal with costs.

Decree confirmed.

G. B. R.

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