



2025:AHC:169551

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 279 of 2011

Vivek Singhal

.....Appellant(s)

Versus

Smt.Vijaya Rani Singhal

.....Respondent(s)

Counsel for Appellant(s)	:	K.M.Garg
Counsel for Respondent(s)	:	Manoj Kumar Tiwari

Court No. - 37

Reserved On:1.8.2025

Delivered On:22.9.2025

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Mr. K.M. Garg, learned counsel for the appellant and Mr. Manoj Kumar Tiwari, learned counsel for the respondent.

2. Brief facts of the case are that the appellant has filed probate case in the Court of District Judge, Ghaziabad seeking probate of Will deed dated 11.12.1974 executed at District- Ghaziabad by one Kulveer Singh son of Raghunath Singh in favour of appellant/ Vivek Singhal in respect to immovable property situated at Village- Balkund, Tahsil- Ladpur, District- Kota, State-Rjasthan. The aforementioned case was registered as probate case no.50 of 2007. In the aforementioned probate case specific and general citation has been issued as well as published in Hindi Daily Aaj. The appellant has filed an application seeking the valuation of the property and proforma of schedule III. The appellant has also filed an affidavit in his examination in Chief. Respondent has filed her no objection and her own affidavit stating that she has no objection for granting probate in favour of the appellant. In the aforementioned probate case one Rajkumar Samsun, Notary Advocate, Ghaziabad has filed his own affidavit proving execution and attestation of Will. One Vandana, sister of the appellant has filed an amendment application seeking her

right in the property in dispute. The amendment application has been rejected by the Court vide order dated 26.11.2007 on the ground that Will has been executed in favour of appellant only, as such, applicant of amendment application is neither necessary nor proper party in the probate case. Additional District Judge, Court No.5, Ghaziabad vide order dated 26.11.2010 rejected the probate case merely on the ground that Will is not covered by the Clause (a) & (b) of Section 57 of the Indian Succession Act, 1925 but it is covered by the Clause (c) of Section 57 of Indian Succession Act, 1925, as such, probate could not be granted. Hence this first appeal from order on behalf of the appellant for the following relief:

" The relief sought by means of the present First Appeal From Order is that this Hon'ble Court may graciously be pleased to allow the present First Appeal From Order in toto, set aside the impugned order dated 26.11.2010 passed by the learned Additional District Judge, Court No.5, Ghaziabad in Probate Case No.50 of 2007 and Probate Case be remanded back to the learned Court below to decide the same on merits or to allow the Probate Case No.50 of 2007 with cost and / or pass such other further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. "

3. This Court on 3.2.2017, issued notice to respondent.

4. In pursuance of the order of this Court dated 3.2.2017, respondent has put in appearance through counsel.

5. Learned counsel for the appellant submitted that the learned Additional District Judge has committed manifest error of law in misreading and misinterpreting the provisions of Section 57 of the Indian Succession Act, 1925. He further submitted that the provisions contained under Section 57 of Indian Succession Act, 1925 does not prohibit to grant probate of Will. He further submitted that respondent has filed an affidavit to the effect that she has no objection in granting probate in favour of applicant / appellant, as such, learned Additional District Judge was under obligation to grant probate to the Will-deed dated 11.12.1974 executed at Ghaziabad itself. He further submitted that according to the provisions contained under Section 213 (2) read with Section 57 of Indian Succession Act,

1925, it is fully demonstrated that so long as particular Will executed by Hindu even if is not covered by the clause (a) and clause (b) of Section 57 of Indian Succession Act, 1925 can establish his right as legatee in any Court of law without obtaining probate. He further submitted that the Court cannot refuse to grant probate when the Will has been duly proved and last Will of testator. He further submitted that the impugned order is against the law, facts and evidence on record, as such, the same is liable to be set aside. He placed reliance upon the following judgements of Apex Court as well as this Court:

- i. 2008 (3) AWC 3004, Surya Prakash Agarwal vs. Ajay Kumar Agarwal and others.*
- ii. AIR 2004 ALLAHABAD 329, Smt. Bimla Gaiindhar vs. Usha Gaiindher and another.*
- iii. Testamentary Case No.1 of 1993 dated 13.8.2018, Smt. Usha Mohan vs. Property of late Sri Mehr Chand Mohan Saraswati Bhawan, Chandganj Extension.*
- iv. AIR 1978 ALLAHABAD 297, Tiloki Nath vs. Kanhiya Lal and others.*
- v. (2005) 12 SCC 505, Nirmala Devi vs. Arun Kumar Gupta and others.*
- vi. 2005 (12) SCC 503, Balbir Singh Wasu vs. Lakhbir Singh.*
- vii. (2021) 15 SCC 282, Ravinder Nath Agarwal vs. Yogender Nath Agarwal and others.*
- viii. (2020) 14 SCC 102, Kanta Yadav vs. Om Prakash Yadav and others.*
- ix. 1966 SCC Online Punj 226, Behari Lal Ram Charan vs. Karam Chand Sahni and others.*
- x. 2014 (10) ADJ 642, Dr. Sunil Kumar vs. Chaitanya Prakash and others.*
- xi. AIR 2001 SC 1151, Clarence Pais and others vs. Union of India.*
- xii. 2006 (3) AWC 3121 (SC), Binapani Kar Chowdhury vs. Satyabrata Basu and another.*

6. On the other hand, Mr. Manoj Kumar Tiwari, learned counsel for the

respondent submitted that the respondent has no objection to the prayer made in the probate case for grant of probate on the basis of Will-deed dated 11.12.1974 executed by Kulveer Singh in favour of the appellant.

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that the Will-deed has been executed on 11.12.1974 at the Ghaziabad by one Kulveer Singh in favour of appellant- Vivek Singhal. There is also no dispute about the fact that Additional District Judge under the impugned order dated 26.11.2010 has held that the probate cannot be issued in view of the provisions contained under Section 57 (a) (b) (c) of Indian Succession Act, 1925.

9. In order to appreciate the controversy involved in the matter, perusal of Section 57 (a) (b) (c) will be relevant, which are as under:

"Section 57. Application of certain provisions of Part to a class of wills made by Hindus, etc.-The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within 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 immovable property situate within those territories or limits; and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b) :

Provided that marriage shall not revoke any such Will or codicil."

10. Perusal of Section 213 of Indian Succession Act, 1925 will be also relevant, which is as under:

"Section 213. No right as executor or legatee when established.—(1) No right as

executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 1[India] has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans or Indian Christians], and shall only apply—

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of classes specified in clauses (a) and (b) of Section 57, and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962, where such wills are made within the local limits of the ordinary 4[original] civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits."

11. In order to appreciate the controversy involved in the matter, perusal of paragraph nos.3 & 4 of the judgement rendered by Allahabad High Court in the case of **Triloki Nath (supra)** will be relevant, which are as under:

"3. I have heard the learned counsel for the parties and in my opinion, the contention raised by the learned counsel is wholly misconceived. Section 264(1) of the Act makes it clear that the District Judge has jurisdiction in granting and revoking probates and letters of administration in all cases within his district. Section 264(2) of the Act makes it clear that except in cases to which section 57 of the Act applies, no court shall (apart from local limits of the towns of Calcutta, Madras and Bombay) receive applications or probate or letters of administration until the State Government has by notification in the official Gazette authorised it so to do. It is evident that where section 57 applies, notification is not necessary. Section 57 of the Act has three sub-clauses. Sub-clause (c) is relevant. Section 57 read with sub-clause (c) reads as follows:

"Section 57(c): The provisions of this part which are set out in Schedule III shall, subject to the ??? and notifications specified therein, apply—

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a)

and (b).”

4. It is apparent from a perusal of the above that where a will has been made by a Hindu, Budhist, Sikh or Jaina on or after the 1st day of January, 1927, and to which sub-clauses (a) and (b) do not apply, the provisions of part VI of the Act would apply subject to the restrictions and modifications specified in Schedule III. Schedule III lays down five restrictions and modifications. There is no dispute that none of these five clauses have any application in the present case. Admittedly, in the present case, the date of the execution of the will is after the 1st January, 1927, and the deceased was a Hindu. Consequently the provisions of section 57 are attracted and in view of the language of section 264(2) of the Act, there was no necessity of a notification in the official Gazette empowering the District Judge to entertain petitions for probates and letters of administration and grant the same. It therefore follows that the District Judge has jurisdiction to entertain petitions and grant letters of administration.”

12. Perusal of Paragraph nos.6 to 12 of the judgement passed in **Kanta Yadav (supra)** will be relevant, which are as under:

“6. The said provisions have been examined and come up for consideration time and again before the Punjab and Haryana High Court and the Delhi High Court. In Ram Chand v. Sardara Singh [Ram Chand v. Sardara Singh, 1961 SCC OnLine P&H 233 : AIR 1962 P&H 382 : PLR (1962) 64 P&H 265] , the Punjab High Court held as under : (SCC OnLine P&H : AIR p. 388, paras 5-7)

“5. The clear effect of these provisions appears to be that the provisions of Section 213(1) requiring probate do not apply to wills made outside Bengal and the local original jurisdictional limits of the High Courts at Madras and Bombay except where such wills relate to immovable property situated within those territories.

6. There remains to be considered the decision [Kesar Singh v. Tej Kaur, 1961 SCC OnLine P&H 71 : PLR (1961) 63 P&H 473] of Shamsher Bahadur, J., in the case mentioned above, which is apparently based on the decision of a Full Bench in Ganshamdoss Narayandoss v. Gulab Bi Bai [Ganshamdoss Narayandoss v. Gulab Bi Bai, 1927 SCC OnLine Mad 158 : ILR (1927) 50 Mad 927] . I find, however, on perusing this judgment that what has been held is that a defendant resisting a claim made by the plaintiff as heir-at-law cannot rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will is not probated and no letters of administration with the will annexed have been granted. This is clearly in accordance with the provisions of Sections 213 and 57(a) of the Act, and the only point on which the matter was referred to the Full Bench was whether a will could be set up

in defence in a suit without probate.

7. As I have said the clear reading of the provisions of the Act leave no doubt whatever that no probate is necessary in order to set up a claim regarding property either movable or immovable on the basis of a will executed in the Punjab and not relating to property situated in the territories mentioned in Section 57(a). I accordingly accept the revision petition and set aside the order of the lower court requiring the petitioner to obtain probate. The matter may now be disposed of by the lower court, where the parties have been directed to appear on 4-12-1961. The parties will bear their own costs in this Court.”

7. The said view was affirmed by the Division Bench of the Punjab and Haryana High Court in Behari Lal Ram Charan v. Karam Chand Sahni [Behari Lal Ram Charan v. Karam Chand Sahni, 1966 SCC OnLine P&H 226 : AIR 1968 P&H 108] : (SCC OnLine P&H)

“3. From a bare perusal of these two sections it is apparent that the objection of Defendant 1 on the preliminary issue raised by him in the trial court was without any substance. Clause (a) of Section 57 read with sub-section (2) of Section 213, it would appear, applies to those cases where the property and parties are situate in the territories of Bengal, Madras and Bombay, while clause (b) applies to those cases where the parties are not residing in those territories but the property involved is situate within those territories. Clause (c) of Section 57, however, is not relevant for the present purposes. Therefore, where both the person and property of any Hindu, Buddhist, Sikh or Jaina, are outside the territories mentioned above, the rigour of Section 213, sub-section (1), is not attracted. Reference was made by the learned referring Judge to a decision of the Supreme Court in Hem Nolini Judah v. Isolyne Sarojbashini Bose [Hem Nolini Judah v. Isolyne Sarojbashini Bose, AIR 1962 SC 1471] , but the parties in that case were Christians (to whom it is agreed Section 57 does not apply) and their Lordships only considered the implications of sub-section (1) of Section 213 of the Act and not of sub-section (2) of that section read with Section 57 clauses (a) and (b). The learned Single Judge probably felt the difficulty because of the view taken by Shamsher Bahadur, J. In Kesar Singh v. Tej Kaur [Kesar Singh v. Tej Kaur, 1961 SCC OnLine P&H 71 : PLR (1961) 63 P&H 473] , but that judgment was considered by Falshaw, J. (as he then was) in Ram Chand v. Sardara Singh [Ram Chand v. Sardara Singh, 1961 SCC OnLine P&H 233 : AIR 1962 P&H 382 : PLR (1962) 64 P&H 265] , who differed from the view taken by Shamsher Bahadur, J., in the abovementioned case, holding that no probate was necessary in order to set up a claim regarding property either movable or immovable on the basis of a will executed in the Punjab and a succession certificate could be granted on the ground of a will without obtaining probate. While referring to the decision of Shamsher Bahadur, J., in Kesar Singh case [Kesar Singh v. Tej Kaur, 1961 SCC OnLine P&H 71 : PLR (1961) 63 P&H 473] , Falshaw, J., observed that the view taken by Shamsher Bahadur, J., was apparently based on the decision of a Full Bench in Ganshamdoss Narayandoss v. Gulab Bi Bai [Ganshamdoss Narayandoss v. Gulab Bi Bai, 1927 SCC OnLine Mad 158 : ILR (1927) 50 Mad 927]

where it was held that a defendant resisting a claim made by the plaintiff as heir-at-law could not rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will was not probated and no letters of administration with the will annexed had been granted. The Madras case was clearly in accordance with Section 213 read with Section 57 of the Act. We agree with the view taken by Falshaw, J., in *Ram Chand case* [*Ram Chand v. Sardara Singh*, 1961 SCC OnLine P&H 233 : AIR 1962 P&H 382 : PLR (1962) 64 P&H 265] . A similar view was expressed by Jai Lal, J., in *Sohan Singh v. Bhag Singh* [*Sohan Singh v. Bhag Singh*, 1934 SCC OnLine Lah 183 : AIR 1934 Lah 599] , and by me in *Radhe Lal v. Ladli Parshad* [*Radhe Lal v. Ladli Parshad*, CR No. 340-D of 1965, order dated 24-8-1965 (P&H)] . Even a cursory glance at Sections 213 and 57 of the Act leaves no room for doubt that the view taken by Shamsheer Bahadur, J., in the case mentioned above was erroneous. It appears that the case of *Sohan Singh v. Bhag Singh* [*Sohan Singh v. Bhag Singh*, 1934 SCC OnLine Lah 183 : AIR 1934 Lah 599] , referred to above, was not brought to his notice.”

8. In *Winifred Nora Theophilus v. Lila Deane* [*Winifred Nora Theophilus v. Lila Deane*, 2001 SCC OnLine Del 644 : AIR 2002 Del 6] , a Single Bench of the Delhi High Court held as under : (SCC OnLine Del para 11)

“11. On interpretation of Section 213 read with Sections 57(a) and (b), the Courts have opined that where the will is made by Hindu, Buddhist, Sikh and Jaina and were subject to the Lt. Governor of Bengal or within the local limits of ordinary, original civil jurisdiction of High Courts of Judicature at Madras and Bombay or even made outside but relating to immovable property within the aforesaid territories that embargo contained in Section 213 shall apply. From this it stands concluded that if will is made by Hindu, Buddhist, Sikh or Jaina outside Bengal, Madras or Bombay then embargo contained in Section 213 shall not apply. This is what the various judgments cited by the learned counsel for the defendants decide. Therefore, there is no problem in arriving at the conclusion that if the will is made in Delhi relating to immovable property in Delhi by Hindu, Buddhist, Sikh or Jaina, no probate is required.”

9. The Division Bench of the Delhi High Court in *Rajan Suri v. State* [*Rajan Suri v. State*, 2005 SCC OnLine Del 1290 : AIR 2006 Del 148] referred to the Division Bench judgment in *Behari Lal* [*Behari Lal Ram Charan v. Karam Chand Sahni*, 1966 SCC OnLine P&H 226 : AIR 1968 P&H 108] case and certain other Single Bench judgments of the Delhi High Court to conclude as under : (*Rajan Suri case* [*Rajan Suri v. State*, 2005 SCC OnLine Del 1290 : AIR 2006 Del 148] , SCC OnLine Del para 33)

“33. The result of the aforesaid is that complete line of judgments referred by the learned counsel for the petitioner in support of the submission that probate is mandatory would have no application to the facts of the present case and thus findings arrived at in the collateral proceedings in the suit to which the petitioners were parties would bind the petitioners.”

10. The learned counsel for the respondents also referred to the Supreme Court judgment in *Clarence Pais v. Union of India* [*Clarence Pais v. Union of India*, (2001) 4 SCC 325] wherein, validity of Section 213 of the Act was challenged as unconstitutional and discriminatory against the Christians. This Court held as under : (SCC p. 332, para 6)

“6. ... A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct.”

11. The statutory provisions are clear that the Act is applicable to wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay — [clause (a) of Section 57 of the Act]. Secondly, it is applicable to all wills and codicils made outside those territories and limits so far as relates to immovable property within the territories aforementioned, clause (b) of Section 57. Clause (c) of Section 57 of the Act relates to the wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by clauses (a) and (b). However, sub-section (2) of Section 213 of the Act applies only to wills made by Hindu, Buddhist, Sikh or Jain where such wills are of the classes specified in clauses (a) or (b) of Section 57. Thus, clause (c) is not applicable in view of Section 213(2) of the Act.

12. In view thereof, the wills and codicils in respect of the persons who are subject to the Lieutenant Governor of Bengal or who are within the local limits of ordinary original civil jurisdiction of the High Court of Madras or Bombay and in respect of the immovable properties situated in the above three areas. Such is the view taken in the number of judgments referred to above in the States of Punjab and Haryana as well as in Delhi as also by this Court in *Clarence Pais* [*Clarence Pais v. Union of India*, (2001) 4 SCC 325].”

13. Perusal of Paragraph nos. Paragraph nos. 5 to 8 of the judgement rendered in the case of ***Clarence Pais (supra)*** will be relevant, which are as under:

"5. On several representations having been made in this regard by the Christian community in India amendment was sought to be introduced by way of a Bill to amend Section 213 of the Act to bring Christians on a par with other communities who are not required to obtain probate. The grievance of the petitioners in these cases, it is stated, is well brought out in the “Statement of Objects and Reasons” dated

13-5-1942 (sic) in respect of the proposed amendment of Section 213 which reads as under:

“Prior to 1901, Indian Christians laboured under a serious grievance, namely, that they were compelled to obtain probate of wills and letters of administration with liability to pay death duties on the death of every owner of property under the Indian Succession Act 10 of 1865, while Hindus and Muslims were exempt from the provisions of the Act. They have since been partially relieved by being placed practically on the same footing as their non-Christian countrymen in cases of intestacy under the Indian Christian Estates Administration Act 7 of 1901; but where the deceased has left a will, they are still bound to obtain probate and pay probate duty as required by Section 213 of the Indian Succession Act 39 of 1925, a section which does not apply to will of Hindus, Buddhists, Sikhs or Jains except where such wills are of the class specified in clauses (a) and (b) of Section 57 and to all wills of Muhammadans.

The necessity of making wills has been imposed upon Indian Christians by the provisions of the Indian Succession Act as to intestate succession being made applicable to them, which are far in advance of their usages and are derived from English law. It is felt as a serious hardship that in such circumstances Indian Christians should be compelled to obtain probate and should be made liable to pay death duties while their non-Christian countrymen to whom wills are a luxury are exempt. From this injustice they should be relieved by placing Indian Christians on the same footing as Hindus and Muhammadans in Sections 213 and 370 of the Act.”

Sections 57 and 213 of the Act provide as follows:

“57. Application of certain provisions of Part to a class of wills made by Hindus, etc.—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of Bengal or within 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 immovable property situate within those territories or limits; and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such will or codicil.”

“213. Right as executor or legatee when established.—(1) No right as executor or legatee can be established in any court of justice, unless a court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans, and shall only apply—

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of Section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962, where such wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, insofar as they relate to immovable property situate within those limits.”

The Hindu Wills Act, 1870 is the forerunner of Section 57 of the Act. This section without the proviso together with Schedule III except Article (5) is Section 2 of the Hindu Wills Act, 1870 as amended by Section 154 of the Probate and Administration Act, 1881. The proviso is proviso to Section 3 of the Hindu Wills Act. Thus, the scheme of the said enactment is retained in Section 57 of the Act.

6. The scope of Section 213(1) of the Act is that it prohibits recognition of rights as an executor or legatee under a will without production of a probate and sets down a rule of evidence and forms really a part of procedural requirement of the law of forum. Section 213(2) of the Act indicates that its applicability is limited to cases of persons mentioned therein. Certain aspects will have to be borne in mind to understand the exact scope of this section. The bar that is imposed by this section is only in respect of the establishment of the right as an executor or legatee and not in respect of the establishment of the right in any other capacity. The section does not prohibit the will being looked into for purposes other than those mentioned in the section. The bar to the establishment of the right is only for its establishment in a court of justice and not its being referred to in other proceedings before administrative or other tribunals. The section is a bar to everyone claiming under a will, whether as a plaintiff or defendant, if no probate or letters of administration are granted. The effect of Section 213(2) of the Act is that the requirement of probate or other representation mentioned in sub-section (1) for the purpose of establishing the right as an executor or legatee in a court is made inapplicable in case of a will made by Muhammadans and in the case of wills coming under Section 57(c) of the Act. Section 57(c) of the Act applies to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of January, 1927 which does not relate to immovable property situate within the territory formerly subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary civil jurisdiction of the High Courts of Judicature at Madras and Bombay, or in respect of property within those territories. No probate is necessary in the case

of wills by Muhammadans. Now by the Indian Succession (Amendment) Act, 1962, the section has been made applicable to wills made by Parsis dying after the commencement of the 1962 Act. A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct.

7. We have shown above that it is applicable to Parsis after the amendment of the Act in 1962 and to Hindus who reside within the territories which on 1-9-1870 were subject to the Lt. Governor of Bengal or to areas covered by original jurisdiction of the High Courts of Bombay and Madras and to all wills made outside those territories and limits so far as they relate to immovable property situate within those territories and limits. If that is so, it cannot be said that the section is exclusively applicable only to Christians and, therefore, it is discriminatory. The whole foundation of the case is thus lost. The differences are not based on any religion but for historical reasons that in the British Empire in India, probate was required to prove the right of a legatee or an executor but not in Part 'B' or 'C' States. That position has continued even after the Constitution has come into force. Historical reasons may justify differential treatment of separate geographical regions provided it bears a reasonable and just relation to the matter in respect of which differential treatment is accorded. Uniformity in law has to be achieved, but that is a long-drawn process. Undoubtedly, the States and Union should be alive to this problem. Only on the basis that some differences arise in one or the other States in regard to testamentary succession, the law does not become discriminatory so as to be invalid. Such differences are bound to arise in a federal set-up.

8. The learned counsel for the petitioners relied on the decisions in B. Venkataramana v. State of Madras [1951 SCC 359 : AIR 1951 SC 229] , Sheokaransingh v. Daulatram [AIR 1955 Raj 201 : 1956 Raj LW 81 (FB)] , State of Rajasthan v. Thakur Pratap Singh [AIR 1960 SC 1208] , Hem Nolini Judah v. Isolyne Sarojbhashini Bose [AIR 1962 SC 1471 : 1962 Supp (3) SCR 294] , Mary Sonia Zachariah v. Union of India [(1995) 1 KLT 644 (FB)] , Ahmedabad Women Action Group (AWAG) v. Union of India [(1997) 3 SCC 573] and Preman v. Union of India [(1998) 2 KLT 1004] . However, in the light of the above conclusion, it is unnecessary to refer to those decisions, though some of them may have a bearing in analysing and understanding the scope of the provisions, which are made applicable exclusively to Christians as it happened in the case of Section 118 of the Act or in the case of the Indian Divorce Act. Therefore, we have not adverted to anyone of these provisions. If Christians alone had been discriminated against by treating them as a separate class, we think the argument could have been understood and

merited consideration."

14. Apex Court as well as this Court in the aforementioned judgements rendered in ***Trilokin Nath (supra)***, ***Kanta Yadav (supra)*** & ***Clarence Pais (supra)*** as quoted above has clearly held that probate petition is maintainable without notification and rigour of Section 213 will not be applicable with regard to Wills falling under Section 57 (c). It has also been held that probate petition is optional and the same cannot be rejected as not maintainable.

15. Considering the ratio of law laid down by Hon'ble Apex Court and this Court, the judgement / order dated 26.11.2010 passed by learned Additional District Judge, Court No.5, Ghaziabad cannot be sustained in the eye of law.

16. Considering the entire facts and circumstances of the case, the judgement / order dated 26.11.2010 passed by learned Additional District Judge, Court No.5, Ghaziabad is liable to be set aside and the same is hereby set aside. The Probate Case No.50 of 2007 is restored to its original number and the Court shall decide the aforementioned Probate Case No.50 of 2007 in accordance with law on merit expeditiously after affording proper opportunity of hearing to the parties.

17. The instant First Appeal From Order is ***allowed*** to the extent indicated above.

18. No order as to costs.

(Chandra Kumar Rai,J.)

September 22, 2025

Rameez