entertained. In view of my decision on other points it is unnecessary to decide this question.

In this view it is not necessary for me to consider the third contention of Mr. Shankar that application of the petitioners, dated 27th January, 1961, was not a valid application.

In the result, this application must fail and is dismissed with no order as to costs.

R. N. M.

REVISIONAL CIVIL

Before Mehar Singh, C. J., and J. S. Bedi, J.

M/S BEHARI LAL RAM CHARAN,—*Petitioner*

versus

KARAM CHAND SAHNI AND OTHERS.—*Respondents*

Civil Revision No. 447-D of 1965.

September 15, 1966

Succession Act (XXXIX of 1925)—Ss. 57 and 213—Suit for recovery of money due to a Hindu filed in Delhi by his legatee basing claim on a will—Whether competent without obtaining probate of the will or letters of administration.

Held, that clause (a) of section 57, read with sub-section (2) of section 213 of the Indian Succession Act, 1925, applies to those cases, where the property and parties are situate in territories of Bengal, Madras and Bombay, while clause (b) applies to those cases where parties are not residing in those territories but the property involved is situate within those territories. Therefore, where both the person and property of any Hindu, Budhist, Sikh or Jaina, are outside the territories mentioned above, the rigour of section 213, sub-section (1), is not attracted. Before a suit is instituted in Delhi by a legatee for the recovery of the amount due to a Hindu, basing his claim on a will of the deceased, it is not necessary to obtain probate of the will or letters of administration with the will or an authenticated copy of the will annexed.

Kesar Singh and others vs. Shrimati Tej Kaur (1) overruled.

Petition under section 115 *of Act V of* 1908 *for revision of the order of Shri P. K. Bahri, Sub-Judge, 1st Class, Delhi, dated 4th June,* 1965, *ordering the evidence of the plaintiff to come up on merits on 17th August,* 1965.

AVADH BEHARI, ADVOCATE, for the Petitioner.

F. C. BEDI, ADVOCATE, for the Respondent.

JUDGMENT

In a suit brought by Mrs. Roshan Lal, plaintiff No. 2, and others for recovery of Rs. 88,151 against the defendants, she alleged herself to be the widow of Roshan Lal and propounded a will of the deceased claiming that the deceased had bequeathed his estate to her entitling her to the above-mentioned amount. One of the pleas taken by defendant No. 1 was that the suit was not competent as no probate or letters of administration of the said will had been taken. The trial Court, after hearing the parties, decided this objection against this defendant and in favour of Mrs. Roshan Lal,—*vide* its order, dated 4th June, 1965. Defendant No. 1 felt aggrieved and approached this Court with the instant revision petition. It came up before Grover, J., who, after hearing the parties, came to the conclusion that the sole point in this petition was whether in a suit instituted in Delhi it was necessary to obtain probate of a will before any claim could be based on that will. After referring to various authorities, mentioned in his order the learned Judge felt that the point involved was not free from difficulty and, therefore, referred this revision petition to a larger bench for decision,—*vide* his order, dated 27th January, 1966. That is how this petition has come up before us.

It would be helpful to reproduce the provisions of sections 213 and 57 of the Indian Succession Act which are to be read together.

> "213(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.

(1) 1961 P.L.R. 473=A.I.R. 1961 Punjab 509.

(2) This section shall not apply in the case of wills made by Muhammadans, and shall only apply in the case of wills made by any Hindu, Budhist, Sikh or Jaina where such wills are of the clauses specified in clauses (a) and (b) of section 57."

"57. The provisions of this part (Part VI) 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, Budhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lt. 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, Budhist, 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."

From a bare perusal of these two sections it is apparent that the objection of defendant No. 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, Budhist, 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 *Mrs. Hem Nolini* v. *Mrs. Isolve Sarojbashini Bose* (2), 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 and others* v. *Tej Kaur* (1), but that judgment was considered by Falshaw, J. (as he then was) in *Ram Chand* v. *Sardara Singh* (3), who differed from the view taken by Shamsher Bahadur, J., in the above-mentioned 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's* case, Falshaw, J., observed that the view taken by Shamsher Bahadur, J., was apparently based on the decision of a Full Bench in *Ganshomdass* v. *Gulab Bi Rai* (4), 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's* case. A similar view was expressed by Jai Lal, J., in *Sohan Singh* v. *Bhag Singh* (5), and by me in C.R. 340-D/1965 (*Radhe Lal* v. *Ladli Parshad*) decided on 24th August, 1965. Even a cursory glance at sections 213 and 57 of the Act leaves no room for doubt that the view taken by Shamsher Bahadur, J., in the case mentioned above was erroneous. It appears that the case of *Sohan Singh* v. *Bhag Singh* (5), referred to above, was not brought to his notice.

Agreeing with the view of Falshaw, J., we hold that in a suit instituted in Delhi it is not necessary to obtain probate of a will before any claim could be based on that will. This petition is, consequently, dismissed with no order as to costs.

MEHAR SINGH, C.J.—I agree.

R. N. M.

(2) A.I.R. 1962 S.C. 1471.
(3) I.L.R. (1962) 1 Punjab 716=1962 P.L.R. 265.
(4) I.L.R. 50 Mad. 927.
(5) A.I.R. 1934 Lah. 599.