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of a sovereign power and doing something which could not be done by private individuals. It can be said regarding that case that the truck was being driven for supplying the needs of army personnel engaged on military duties which could not be performed by civilians. It is at any rate safe to say that that case cannot be regarded as an authority for the general proposition that in no case can an action for damages be brought against the Government merely because the vehicle involved in the accident is an army truck driven by a military employee in the performance of some duty or other. The result is that I would answer the question referred to a Full Bench in the affirmative. The case may be returned to the Division Bench for consideration of any other point which may arise.

MEHAR SINGH, J.—I agree.

A. N. GROVER, J.—I concur.

B.R.T.

REVISIONAL CIVIL

*Before D. Falshaw, J.*

RAM CHAND,—*Petitioner*

*versus*

SARDARA SINGH AND ANOTHER,—*Respondents*

Civil Revision No. 447 of 1961.

*Succession Act (XXXIX of 1925)—Sections 57 and 213—  
Probate of a will executed in the Punjab— Whether neces-  
sary in order to set up a claim to movable or immovable  
property on the basis thereof.*

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*Held*, that the provisions of section 213(1) of the Succession Act, 1925, 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 situate within those territories. No probate, therefore, 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) of the said Act.

*Kesar Singh and others v. Shrimati Tej Kaur* (1), dissented from.

*Petition under Section 44 of Act IX of 1919 Punjab Courts Act and Section 115 of Civil Procedure Code for revision of the order of Shri Harbans Singh, Sub-Judge Ist Class, Rupar, dated the 14th June, 1961, granting a stay for a period of two months from the date of the order and directing Ram Chand to seek grant of a probate from a competent Court.*

*Application for grant of succession certificate in respect of Rs. 2,967.86 nP. of Shrimati Bhag Bhari.*

DALIP SINGH, ADVOCATE, for the Petitioner.

GUR RATTAN PAL SINGH, ADVOCATE, for the Respondent.

#### JUDGMENT

FALSHAW, J.—This revision petition has arisen in the following circumstances. Sardara Singh respondent had applied for the grant of succession certificate regarding a sum of about Rs. 3,000 lying in a Savings Bank account of Shrimati Bhag Bhari deceased, claiming to be her heir as nephew of her late husband. The present petitioner Ram Chand opposed the application and claimed that he should be given the succession certificate on the ground of a will made by the deceased in his favour on the 28th of August, 1958. He is apparently the brother of the deceased.

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After the parties had led evidence the point was apparently raised that Ram Chand could not claim the property on the basis of a will without having obtained probate, reliance on this point being placed on the decision of Shamsheer Bahadur,

(1) (1961) 63 P.L.R. 473.

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J. in *Kesar Singh and others v. Shrimati Tej Kaur*, (1). This contention prevailed and the lower Court passed an order staying proceedings for two months for the purpose of allowing Ram Chand to obtain probate from the appropriate Court.

This order is challenged in the present petition by Ram Chand, who claims that no probate is necessary. On this point he relies on the decisions in *Sohan Singh and others v. Bhag Singh and others* (2), and *Ahemad and another v. Ghisia Hira Teli and another* (3). In both these cases it was held even regarding immovable property that it was not necessary for probate to be obtained in order to set up a title based on a will.

The relevant provisions of law are contained in sections 213 and 57 of the Succession Act of 1925. Section 213 reads—

“(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 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.”

The relevant part of section 57 reads—

“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

(1) (1961) 63 P.L.R. 473.

(2) A.I.R. 1934 Lah. 599.

(3) A.I.R. 1945 Nagpur 237.

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

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- (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.”

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.

There remains to be considered the decision of Shamsheer 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*, (1). 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.

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

(1) I.L.R. 50 Mad. 927.

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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 the 4th of December, 1961. The parties will bear their own costs in this Court.

B.R.T.

CRIMINAL MISCELLANEOUS

Before D. Falshaw, J.

TARA CHAND,—Petitioner.

*versus*

THE STATE AND ANOTHER,—Respondents.

Criminal Miscellaneous No. 553 of 1960.

1961  
Nov., 21st

*Code of Criminal Procedure (Act V of 1898)—Section 476—Rent Controller and Appellate Authority constituted under East Punjab Urban Rent Restriction Act (III of 1949)—Whether civil Courts.*

*Held, that neither the Rent Controller nor Appellate Authority constituted under the East Punjab Urban Rent Restriction Act, 1949, is a Court and so they cannot be held to be civil Courts within the meaning of section 476 of the Code of Criminal Procedure.*

*Petition under section 439/561-A Criminal Procedure Code, praying that the order, dated 2nd May, 1960, passed under section 476, Criminal Procedure Code, by Shri Chaitan Dass Jain, District and Sessions Judge, (As Appellate Authority), Ferozepur, (calling upon the petitioner to show cause why he should not be prosecuted for perjury) be quashed and further proceedings be stayed.*

*Petition filed on 3rd August, 1960.*

C. L. AGGARWAL AND P. N. AGGARWAL, ADVOCATES, for the Petitioner.

K. L. KAPUR, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.