

(1920) 10 BOM CK 0019

Bombay High Court

Case No: None

Jethabhai Gokaldas Patel and
Others

APPELLANT

Vs

Parshotam Havsa Kumbhar and
Another

RESPONDENT

Date of Decision: Oct. 4, 1920

Citation: (1921) ILR (Bom) 987

Hon'ble Judges: Norman Macleod, J; Fawcett, J

Bench: Division Bench

Judgement

Norman Macleod, Kt., C.J.

The applicants applied for probate of a will purporting to be the last will of two persons Lallu and his wife Shiv. They died of plague, Shiv on, the 10th of November 1917 and Lallu on the 13th of November. The learned Judge came to the conclusion that the will so propounded was a genuine document. Although there are circumstances which might lead us to look upon the document with some amount of suspicion, yet the learned Judge who saw the witnesses and heard their evidence came to the conclusion that the will was a genuine document. There is no reason why we should disturb the finding of the trial Judge on a pure question of fact. The learned Judge refused probate on the ground that it was not possible for two persons to make a conjoint will. That admittedly was a wrong view of the law. It has certainly for many years been recognised by the English Courts that a will made by two persons is a perfectly valid will, although no doubt it may lead to various complicated situations the solution of which has to be determined according to the facts of each case. These English authorities were considered in *Minakshi Ammal v. Viswanatha Aiyar* (1909) 33 Mad. 406, where the Court came to the conclusion that a joint will can validly be made by two persons. Here as the two persons who made the conjoint will died within three days of each other no complications would arise, and therefore, there is no reason why probate should not issue to the applicants. The appeal will be allowed and the case must go back for the trial Court to issue

probate to the applicants subject to the provisions of the Court-Fees Act. The appellants to get their costs from opponent No. 1 in both Courts. The cross-objections are dismissed with costs.