

(1943) 12 PRI CK 0004

In the Privy Council

Case No : Privy Council Appeal No. 31 of 1941

Ashtbhuja Ratan Kuer

APPELLANT

Vs

Thakur Debi Baksh Singh and another

RESPONDENT

Date of Decision : 21-12-1943

Acts Referred:

Citation : (1944) AIR(PC) 29

Hon'ble Judges : George Rankin, Lord Porter, Lord Atkin, JJ.

**Advocate : Hy S.L. Polak and Co., R.K. Handoo, C.S. Rewcastle, for the
Appearing Parties.**

Judgement

Lord Porter

This appeal from a decree of the High Court at Allahabad dated 15th April 1937, concerns the genuineness of an alleged will of one Thakur Ambika Bakhsh Singh.

The main questions for determination are : (i) whether on the evidence before the Courts in India the genuineness of the will was established; (ii) whether the grant of letters of administration cum testamento annexo by the District Judge of Benares (which is within the "province" of Agra) is invalid on the ground that although the whole of the testator's property was situated within the United Provinces of Agra and Oudh, yet by far the larger and more valuable part of it was in Oudh and only a portion small in quantity and value was situated in Agra.

On 1st October 1904, the testator is said to have executed in Jaunpur in Agra a will by which he gave successive life interests in his estate of Nanemau to (a) his elder brother's widow; (b) his own senior wife ; (c) his own junior wife, and thereafter in the events which happened to his posthumous daughter, who is appellant before their Lordships' Board.

The testator is described in the document as being and in fact was Talukdar of Nanemau, District Sultanpur, Oudh.

The will is a lengthy document which sets out firstly his title to the property,

secondly his relatives who were living and dead and thirdly his reason for making a will at that time. It then goes on to deal with the succession to his estate in the manner set out above. Its terms are somewhat garrulous and ingenuous but not perhaps, unnatural in a man of the testator's position more particularly as he appears to have been influenced by the death of his brothers, which occurred at a comparatively early age, and by the prognostications of an astrologer who foretold danger to the testator's life in his 35th and 36th year, i.e., about a year after the date of the making of the will. The will concludes in para. 8

"Paragraph No. 8-I will keep this memorandum of will having enclosed it in an envelope at such a place that after my death no one except the three Thakuranis have access to it and I will write a slip in Hindi giving instructions that whoever may find it should not disclose it but should at once get it posted in some distant post office, and probably she will do so. I have thought of this plan so that there may be no friction among the three Thakuranis and no Thakurain should bring any accusation against another Thakurain that the Talukdar had done this in consultation with her, otherwise it will be a cause of ill-feelings among them. The envelope in which this memorandum will be enclosed will bear an address so that it may be presented before His Excellency the Governor-General of India in Council and His Excellency will be graciously pleased to send it to that officer who will fully take into consideration the conditions laid down herein because I do not know what department should deal with it and which officer is competent to consider over the contents thereof."

The testator died on 13th August 1905, at about the age of 35 or 36, leaving (i) his elder brother's widow, (ii) his own senior widow, (iii) his own junior widow, alive at his death. The appellant, who is the testator's daughter by his junior widow, was born posthumously on 31st October 1905.

After his death someone appears to have carried out certain directions as to the despatch of a will of the testator to the Government of India, since, when the will in dispute was afterwards produced in the manner described later, there was attached to it a memorandum of the Government of the United Provinces addressed to the testator and there was written upon it an endorsement in red ink.

(1) The memorandum is in the following terms :

"REVENUE DEPARTMENT.

Dated, Allahabad, 25th January 1906.

Office Memorandum.

The undersigned is directed to acknowledge the receipt of a document dated 1st October 1904, purporting to be the will of Babu Ambika Bakhsh Singh, Talukadar of Nanemau, Sultanpur District, which has been transferred by the Government of India, Foreign Department, to this government for disposal : and to say that the will should be registered under the Indian Registration Act, 3 of 1877.

(Signed illegible).

Under Secretary to Government, United Provinces.

To Babu Ambika Bakhsh Singh, Talukadar, Nanemau, District Sultanpur."

(2) The endorsement is as follows: "P. B. R. no. 1036. Received 20th November 1905."

It was suggested in the Courts below that P. B. R. means Persian Branch Register and it is possible that the document which was in "Urdu" was sent to that Register for translation. The Government of India although approached after the issue of the plaint for further information on the matter were unable to supply any, inasmuch as they have destroyed the relevant records for 1905.

The letter, however, is obviously genuine and no doubt as to its authenticity was raised in the Courts in India.

It is not known who sent some will (whether this or other) to the Government of India but the later history of the document is as follows.

One Niaz Ahmad, a mukhtar who had been employed on the estate during the testator's lifetime and after his death continued to act on behalf of his junior widow, kept a locked box, the contents of which are said to have been unknown, until he left the service and the estate in 1919. About a year after his departure, one Raj Narain who had been appointed to succeed him opened the box in the presence of the junior widow and others on receiving information (as he alleged) that Niaz Ahmad had died. In the box was found the will and letter and both were handed to the junior widow, who shortly afterwards presented the will for registration to the sub-registrar at Jaunpur.

The sub-registrar accepted the will for registration under R. 41 (2) and held that, as the senior widow was dead, the junior was competent to produce the will under S. 40, Registration Act. Accordingly the will was registered on 20th January 1920.

On 11th April 1929, the appellant as posthumous daughter and residuary legatee of the testator and as his heir presented a petition in the Court of the District Judge of Benares under S. 232, Succession Act, 1925, for letters of administration with copy of the will annexed. In her petition she stated (as the fact was) that the testator had not appointed any executor, that those who were appointed life owners or managers had taken no steps to obtain probate or letters of administration, that the testator's elder brother's widow had relinquished her rights in favour of the testator's senior widow, that the latter had died in 1908 and that the junior widow was in possession of the testator's estate.

Objections to this petition were filed by a number of persons but only those of Debi Baksh Singh and Lal Bhupendra Narain Singh dated 14th December 1929 and 18th January 1930, respectively, are now relevant, the others having been

withdrawn. Debi Baksh Singh claimed to be a "near reversioner" and contended that : (a) the Court of the District Judge of Benares had no jurisdiction to entertain the petition as all the property of the testator was situated in the province of Oudh; (b) the will was a forged document; (c) the registration at Jaunpur was invalid and being unregistered the will was not admissible in evidence.

Lal Bhupendra Narain Singh said that under the will he (and not the appellant) as son of the testator's brother's daughter was the sole residuary legatee and was the person best entitled to the grant of letters of administration but he also questioned the jurisdiction of the Court and reserved the right to object to the will on account of certain alterations therein. The last point was disposed of by the District Judge who found that the alterations were made before the testator signed the document. It was not persisted in before the High Court in India, and need not be further considered. On 4th December 1930, however, the learned District Judge framed two preliminary issues dealing with this question of jurisdiction, viz :

(1) Has the Court jurisdiction to hear this petition.

(2) If it has, should it exercise its discretion under S. 271, Succession Act, and refuse to entertain the case.

To the first of these questions the learned District Judge answered "Yes" and to the latter "No." That he had jurisdiction appears to their Lordships plain. Under the terms of S. 270, Succession Act, 1925,

"Letters of administration to the estate of a deceased person may be granted by a District Judge if it appears that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode or any property moveable or immovable within the jurisdiction of the Judge."

Acting upon this provision the learned District Judge decided that inasmuch as some of the property of the testator even though of very small value was admittedly situated in the Jaunpur District at the time of the hearing and property of a greater value at the time of the death, the Court had jurisdiction to hear the petition. Accordingly a decree was eventually passed in the words "It is ordered and decreed that letters of administration with a copy of the will annexed be granted to the petitioner." It is to be observed that this decree does not state over what property or estate it was to have effect. Nor need it do so. Section 273, Succession Act, makes the necessary provision, when it enacts that

"Probate or letters of administration shall have effect over all the property and estate moveable or immovable of the deceased throughout the Province in which the same is or are granted."

It was, it is true, argued on behalf of the petitioner that "Province" in this section was not confined to the Province of Agra, but, since the passing of Act 7 of 1902, meant the amalgamated Provinces of Oudh and Agra. The District Judge

accepted this view. The High Court on the other hand held that the District Judge of Benares was wrong and the decree was bad because the grant was not in terms limited to the property situated in the Province of Agra but was absolute. No doubt the learned District Judge did take the view that the grant extended over the United Provinces but he has not made a decree to that effect-he has merely worded it in general terms so that it takes effect only over the estate in the province in which the grant was made, whatever that province and that estate may be.

In considering the various issues involved their Lordships have not had the assistance of any case or argument on behalf of the respondents and in their opinion it would, in these circumstances, be undesirable to express any opinion upon a point obviously of difficulty and importance. They will only say that for the reasons they have given, the Court had jurisdiction and leave the decision as to the property over which the grant had effect to an occasion when it is necessary to decide that point. Nor do their Lordships think that the grant was made without jurisdiction because the learned District Judge did not limit the grant to the property within his own jurisdiction. It is true that S. 271, Succession Act, enacts that :

"When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if, in his judgment it could be disposed of more justly or more conveniently in another district or, where the application is for letters of administration to grant them absolutely or limited to property within his own jurisdiction."

This provision however does not go to jurisdiction but to discretion. In the present case the genuineness of a will was in dispute and in order to resolve it witnesses had to be called and the documents produced. In their Lordships' view the District Judge had ample evidence upon which to decide that it was proper to hear the petition and to grant the letters of administration absolutely. In so doing he has considered the matter both on the footing that the grant would have effect over all the property both in Agra and Oudh and also upon the footing that it would have effect over the property in Agra only. In either case he decided to exercise his discretion in favour of making the grant. Their Lordships think that he had material before him upon which he could properly so exercise his discretion and that there is no reason for interfering with it.

If as their Lordships think the learned District Judge had jurisdiction and was justified in using his discretion as he did there remains the further question whether he was right in finding, as in fact he found, that the will was a genuine one. The High Court came to the conclusion that he was wrong and no doubt there are certain elements which require careful scrutiny and give rise to some suspicion. It is clear that the daughter, who would lose the inheritance of the taluqdari property unless it were devised to her, was interested in the production of a will. It could not be established what will was sent to the Government of

India after the testator's death in 1905 or who sent it, nor is it clear who received the letter and will in 1906. The testator employed the clerk to a local vakil in Jaunpur instead of obtaining the services of some well-known vakil in Oudh where most of the property was. The will was not registered within one month of its execution, as is required by S. 13, Oudh Estates Act of 1869, though not in respect of Agra, and was found in an unexpected place. Further, when it was registered in Jaunpur, no steps were taken to bring it to the attention of the Deputy Commissioner or the Manager of the Court of Wards which was in control of the estate from 1909 to 1925. All these are matters for serious consideration, but in the first place it was common ground both before the District Judge and before the High Court that the letter from the Secretariat in 1906 is a genuine document. Some will was therefore sent to the Government of India in 1905 and passed on by it to the Local Government. Moreover, the will itself which was in Urdu appears to have been transmitted to P. B. R. which as was suggested may well mean that it reached the Persian Branch Registry for the purpose of translation.

This action is in accordance with the instructions contained in the will itself and is what would be expected if the document sent was the disputed will. That some person or persons should risk forging a fresh will when the genuine one had already reached a government department, and though that department might well have retained a copy of it, seems unlikely. Moreover, the elaborate and somewhat ingenuous terms of the will itself do not suggest the work of a forger. Nor do their Lordships think that the evidence of the attesting witness or to a less degree that of the two persons alleged to have been present at the signing should be put aside as of little or no value. The only attesting witness who was still alive was called, and the learned District Judge who saw all these witnesses accepted their evidence. Had the property been in the possession of someone other than those specified in the will at the time of its finding or before the petition was launched, much might have been made of the delay and failure to notify the Court of Wards, but as it was, for the moment at any rate the terms of the will made no change and there was no urgency to take any step.

The High Court seem to have been much impressed by the fact that Raj Narain who alleged that he had found the will in the box originally stated that his predecessor Niaz Ahmad had died in 1919, whereas afterwards it was established that the death occurred in 1927. The witness was recalled at a later stage, and corrected his evidence by saying that he heard Niaz Ahmad died in 1919. In the circumstances their Lordships cannot regard this mistake as a vital one. To them as to the learned District Judge, who saw the witness, it does not appear unnatural that he should have acted on hearsay and believed his predecessor to have died at the earlier date.

Having regard to the contents of this will, the apparent compliance with them by the sending of it to the Government of India and the evidence of a witness to the will and eye- witnesses of its signature accepted by the learned District Judge,

their Lordships think the better opinion is that the will is a genuine one and should be affirmed. They accordingly will humbly advise His Majesty that the appeal should be allowed, the judgment of the High Court set aside, that of the District Judge affirmed, and letters of administration granted in the terms of the decree of 19th May 1933. The respondents must pay the costs of the appellant in the High Court and before their Lordships' Board.