

(1932) 11 PAT CK 0016
In the Patna High Court

Gayeshwar Prasad and Others

APPELLANT

Vs

Musammat Bhagwati Kuer

RESPONDENT

Date of Decision : 16-11-1932

Acts Referred:

Citation : AIR 1933 Patna 612 : 148 Ind. Cas. 5

Hon'ble Judges : James, J;Fazl Ali, J

Bench : Division Bench

Judgement

James, J.—Naubat Lal a mukhtear of Gaya, after his son and daughter had both died young, found himself approaching old age without any children. He and his wife took into their family Bhagwati Kuer, a daughter of the wife's brother whom they brought up as their own daughter. Naubat Lal married the girl to a man named Bit Lal who lived with him until he died in 1910 and in their old age there was living. with them the widow whom they treated as a daughter and her daughter whom they treated as a grand-daughter. It is said that shortly after the death of Bit Lal in 1910, Naubat Lal executed a will where by he left his estate to his widow for life, with remainder to Musammat Bhagwati Kuer, whom he had practically speaking adopted, and her daughter Musammat Prem Kuer. Naubat Lal's widow did not obtain probate of the will, but entered into possession of the estate in the ordinary course. After her death, when the property was claimed by the sons of Naubat Lal's sister as reversioners the first attempt was made to prove the will. On November 30, 1929, Bhagwati Kuer applied for probate. The suit was contested by the sister's sons who denied that the will had been executed at all taking the alternative pleading that Naubat Lal was not of sound mind, and that the will had been executed, if executed at all, under the undue influence of Kali Charan the brother of Naubat Lal's wife. The District Judge of Gaya awarded to Musammat Bhagwati Kuer letters of administration with the will annexed finding that it had been duly executed, and finding that Naubat Lal was of sound disposing mind at the time and that there was no undue influence; the sister's sons appeal from that decision.

2. The will purports to have been executed on July 9, 1910. On May 31, 1914 the District Sub-Registrar of Gaya attended at the house of Naubat Lal, who by that time had become blind and intirm, and registered it. Mr. Khurshed Hussain on behalf of the appellants suggests that the will was not really executed in 1910 and that the will which was registered in 1914 was not the will of Naubat Lal, who was not at that time in a fit state to execute such an instrument. The first point which is naturally taken on behalf of the appellants is that the will is open to suspicion, owing to the long delay which elapsed before any attempt was made to prove it in Court. Mr. Baldeo Sahay on behalf of the respondent points out that the widow had every inducement to postpone the proof of the will so long as she was alive, because the proof of the will would involve payment of probate duty on the value of the estate. If Naubat Lal had died intestate, the widow would in the ordinary course have enjoyed a life estate in his property without the payment of any succession duty, so that it was natural that she should postpone proving the will, and that it should not be produced in Court until the property devolved in a manner dependent on the will, that is to say, until it took a course at variance with the ordinary course of intestate succession. The explanation is reasonable; though it may be unfortunate that the liability to pay probate duty which is incurred by the person propounding a will affords such manifest temptation to delay propounding it when the estate immediately created by the will is for practical purposes similar to that which would follow on intestate succession. The explanation is one which must be accepted.

3. Mr. Khurshed Hussain argues in the second place that the will ought to be regarded with suspicion as being an unnatural will, because it disinherits the reversionary heirs of Naubat Lal. The learned District Judge regarded the will as a natural will, that is to say, he considered that Naubat Lal had left his property in the manner which would be expected, considering the circumstances in which he lived during the latter part of his life. Mr. Khurshed Hussain suggests that a pious Hindu disinheriting his reversionary heirs, and leaving the property in a manner not warranted by the Shashtras, would suffer in spiritual benefits; and that the will must be regarded as unnatural and as prima facie open to suspicion on that ground. It may be observed that this kind of criticism might be made of practically every will executed by Hindus of small means in Behar, since unless the property were left in a manner at variance with the rules of intestate succession, there would be no point in making a will at all. But Mr. Khurshed Hussain, conceding that it may be natural that some provision should be made for Musammat Bhagwati Kuer and her daughter, argues that a pious Hindu would not have ignored the interest of his reversionary heirs. There is actually in the will the expression of a desire that if no children should survive Musammat Bhagwati Kuer and her daughter, the property should go to his sister's sons; and it is possible that the testator intended in this way to create a valid contingent remainder for the benefit of their families, but it is no part of our duty as a probate Court to express an opinion on the validity of this contingent bequest. On the whole it appears to us that the view set forth by Mr. Baldeo Sahay,

supporting that of the learned District Judge is correct, that this is such a will as we should expect to be executed by a person living as Naubat Lal and his wife did, having for practical purposes adopted Musammat Bhagwati Kuer as a daughter. The will is not to be regarded with suspicion as being in any way unnatural.

4. The will is said to have been executed on July 9, 1910. When it came to be proved the attesting witnesses were all dead except two, one of whom gave evidence in support of the will while the other giving evidence for the caveator denied his signature Tota Pandey, the purohit of Naubat Lal, one of the attesting witnesses to the will, was also present at the time of registration in 1914, and identified Naubat Lal before the Sub-Registrar. At that time three more witnesses attested the document, all of whom also are now dead. Tota Pandey says that the will was drafted by a Mokhtar named Dil Narayan who was the maternal grandfather of Kesho Prasad alias Rit Lal, the deceased husband of Musammat Bhagwati Kuer. The fair copy was made by Naubat Lal himself who wrote the whole will. On the other hand Mahabir Lal, who is apparently identical with Mahabir Prasad whose name appears as a witness on the will, denies that he attested it to Pandey points out Mahabir's signature and says that he actually saw him attest the will. The will was registered on March 31, 1944. The learned District Judge thinks that the delay may be accounted for by natural habits of procrastination, and for the fact that it was Naubat Lal who obtained registration of the will. We have again to rely upon the evidence of to Pandey, though as the learned District Judge has pointed out, there is internal evidence in the manner of the endorsement by the sub-Registrar that Naubat Lal himself appeared before him. Mr. Khurshed Hussain points out that there is no evidence to show that at the time of registration the contents of the will were read out to the testator who was blind, but the sub-Registrar endorsed upon the will the statement that execution was admitted by Naubat Lal. The will itself is a very lengthy document in the Persian script but at the end there is a very brief summary of its effect written in Hindi, which at least would have been explained to Naubat Lal by the sub-Registrar before he could have recorded that execution was alimited. If Naubat Lal had himself written out the will in 1910, he would have known well enough what he was doing when he procured the registration of it in 1914, and on the point of its execution in 1910, we are ultimately driven to the evidence of to Pandey and to the question of whether he is to be believed.

5. As I have said the document purports to be a holograph will written by Naubat Lal himself. The learned District Judge has remarked that there is no evidence to prove that the will is in the handwriting of the testator and that no argument as to the genuineness of the will can be drawn from the handwriting. A witness on behalf of the defendants, Uday Narayan, a Zamindar of Naubat Lal's village, Kanungo Bigha, says that the will does not appear to him to be in Naubat Lal's handwriting, but that the signature appears to be that of Naubat Lal. He is unable to say whether the signature purporting to be that of the scribe is the signature of Naubat Lal or not. Mr. Khuished Hussain suggests that the remark of

the learned District Judge that there is no evidence to prove that the will is in the handwriting to the testator indicates that he does not accept the evidence of to Pandey to the effect that Naubat Lal himself had made the fair copy. If this is what the learned District Judge that there would be manifest inconsistency in his judgment since at a later stage he draws definite conclusions from his finding that it was Naubat Lal who wrote out the whole will. The learned District Judge apparently does not mean to say that there is no evidence that Naubat Lal wrote the whole will, but that no expert evidence has been called nor any comparison made with the admitted handwriting of Naubat Lal to prove that the body of the will is in his handwriting. The Pandey manifestly cannot give evidence on that point as a person acquainted with Naubat Lal's handwriting because he cannot read the Persian script; but he says in his evidence that Naubat Lal wrote the whole will, and again in cross-examination that Naubat Lal himself made the fair copy. Mr. Khurshed Huesain suggests that this evidence is insufficient because the witness has not said in so many words that he saw Naubat Lal writing the will but to Pandey said that Naubat Lal wrote the whole will and if this statement was based on anything but first-hand knowledge, the fact should have been elicited in cross examination. If to Pandey's evidence is to be accepted it must be found that Naubat Lal executed the will and that he himself, wrote the whole document.

6. At the time of registration Naubat-Lal was blind and when he signed the will the pen had to be placed in his hand by Kali Charan. It is suggested that his signature which purports to have been made in 1910 is so similar to that four years later, when he had become blind as to justify a suspicion that both the signatures were made at the same time, and that the will was really concocted in 1914 after Naubat Lal had become blind and infirm; but the similarity in the signatures is not so marked as to justify any such suspicion. It is also suggested that differences in the darkness of the ink used by the various attesting witnesses imply that the signatures were not made at the same time, but no inference imputing forgery can be drawn from slight differences of this kind. The will is a long document, and the locally manufactured ink would probably have had to be renewed from time to time so that no inference for or against the genuineness, of the will can possibly be drawn from difference in the quality of the ink. It, must be regarded as practically certain that no other man was put forward to personate Naubat Lal at the registration in 1914, and that the Registrar when he took the admission of execution from Naubat Lal saw that he understood the purport of the document

7. The defendant's witness Mahabir Lal whose father was a consinger man of Naubat, Lal's father, says that he knew when the Sub-Registrar came to the village and it would certainly have been a most dangerous thing to have attempted to procure by personation or deceit the registration of a will which was not that of Naubat Lal since as soon as it was registered a copy would be available in the registry office for anybody's inspection and Naubat Lal was alive for more than a year after the registration. In the attempt, which as has been said may or may not have been successful, to create a contingent remainder in

favour of the family of the sister's sons, only three of the sons are named though there is a subsequent reference to four of them. It is suggested on behalf of the appellants that this implies that the will was forged by somebody who did not know the name of the fourth son; but a man writing out a will of this length might very easily make such an omission and nothing is to be deduced from this. As I have said, the question ultimately resolves itself into that of whether the evidence of to Pandey is to be accepted in preference to that of Mahabir Lal. The learned District Judge, before whom the witnesses gave evidence, believed the evidence of the Pandey and no sufficient reason has been made out to justify our finding that he was wrong in doing so. I there fore accept the finding of the learned District Judge that the Will was duly executed by Naubat Lal on July 9, 1910 and that it was throughout in Naubat Lal's handwriting

8. It appears that Naubat Lal retired from practice as a mokhtar in 1910, shortly after the time at which the husband of Musammatt Bhagwati Kuer died. The will purports to have been executed about a month after the husband's death. According to The Pandey, Naubat Lal became blind at about the end of 1912 and began to suffer from diabetes at some time in the following year Witnesses for the propounder, The Pandey, Baidnath, Tikam, Lal, and Dina Mahton say that he was of sound mind up to the end. According to Mahabir Naubat Lal became distraught with grief at the death of Kesho Prasad in June 1910 and thenceforth was practically insane. Rambaran Missir and Uday Narain also say that after Kesho Prasad's death Naubat Lal used to talk incoherently. The learned Judge who accepted the evidence of The Pandey considered that it should be held that at the time of execution of the will, and also at the time of registration, the mental condition of Naubat Lal was sound. He points out that the Sub-Registrar would not have registered the document if Naubat Lal had been in the condition described by the defence witnesses, and further that if he had been in that condition in 1910 he could hardly have written out the whole of the will as he did The finding of the learned District Judge must be accepted that at the time of the execution of the will Naubat Lal was of sound mind

9 On the point of undue influence, as the learned District Judge has observed, there is no evidence nor, since we must accept the evidence of to Pandey, can it be held that at the time when the will was executed the condition of Naubat Lal was such that he would be subject to undue influence from Kali charan or anybody else. A small piece of land of about 8 bighas is left in the will to one of Kali Charan's sons but no inference of undue influence can be drawn from that fact. I would accept the finding of the learned District Judge that there was no undue influence

10 When the will was registered in 1914 three more attesting witnesses were made to sign it. They apparently attested the registration of the will rather than its execution. But Mr. Khurshed Hussain argues that since they were not expressly attesting Witnesses of the admission before the registration officer, this should be regarded as a new execution, so that in the absence of proof that they

attested in the express admission of the testator the will cannot be treated as properly proved. Regarding this argument it is sufficient to observe that although it was open to Naubat Lal if he chose to make a fresh admission of execution in the presence of the attesting witnesses so as to secure more attesting witnesses to his will, he would not by doing that invalidate the effect of the execution which he had made in May, 1910. As I have said, the will which has been proved and which was registered is the will, which was duly executed in 1910. It has been proved and the learned District Judge acted rightly in granting to the proper under letters of administration with the will annexed. The decision of the learned District Judge is accordingly affirmed and the appeal is dismissed with costs. Hearing fee Rs. 150

Fazl Ali, J.

I agree.