

(1933) 11 BOM CK 0019
In the Bombay High Court

Govind Prasad

APPELLANT

Vs

Kunwarani Bala Kunwar

RESPONDENT

Date of Decision : 17-11-1933

Acts Referred:

Citation : (1934) 36 BOMLR 232

Hon'ble Judges : Thankerton, J;Lancelot Sanderson, J;Alness, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Thankerton, J.—This appeal relates to the estate of Dushashan Singh, who died childless on March 21, 1912, leaving a widow, Lachmi Kuer, who died on January 7, 1921. The suit was brought on November 21, 1923, by Kunwarani Bala Kunwar, the niece of Lachmi Kuer, who claimed the estate by virtue of a written will, alleged to have been executed by Dushashan Singh in or about December 1911, some three months before his death, but which had been lost or destroyed and could not be produced. The defendants claim right to the estate as being entitled to the reversionary right on the death of the widow.

2. The only issue in the suit was "Did Dushashan Singh make a will in favour of the plaintiff and is she owner of the property in suit by virtue of the will?" The Additional Subordinate Judge of Mainpuri, before whom the suit was tried, held that the plaintiff had failed to prove the alleged will, and on April 12, 1924, he dismissed the suit. On an appeal by the plaintiff, the High Court of Judicature at Allahabad, by decree, dated November 14, 1927, set aside the decree of the Subordinate Judge and decreed the suit of the plaintiff for declaration that she was the owner of the property in suit on the basis of the will of Dushashan Singh. The defendants have brought the present appeal against the decision of the High Court. The respondents, (other than the pro-forma defendants), are the representatives of the plaintiff, who has died since that decision.

3. The main question in the appeal is whether the respondents have proved the

alleged will and its contents. The appellants maintain that the will has not been proved, but their counsel admitted at the outset that the appeal could not succeed unless the credibility of the plaintiff's witnesses was successfully impugned, because the evidence, if believed, was sufficient to establish the plaintiff's case. The question, therefore, turns wholly on the credibility of the plaintiff's witnesses.

4. In the first place, it is to be noted that the learned Subordinate Judge's rejection of the plaintiff's evidence is solely based on the evidence, oral and documentary, placed before him; he makes no comment on the demeanour of the witnesses or on their truthfulness apart from comments on the probabilities of the truth of the story actually told by them viewed in the light of the surrounding circumstances. It follows that an appellate Court is in as good a position to judge of the matter as the trial Court.

5. In the second place, their Lordships agree with the High Court that the criticisms of the Subordinate Judge, when pushed to their logical conclusion, amount to the allegation of a wide-spread conspiracy on the part of the original plaintiff, Bala Kunwar, and her witnesses, and this was admitted by counsel for the present appellants. It is further to be observed, as also noted by the High Court, that none of the witnesses was asked any question as to any discreditable action on his part at any time of his life, nor was any suggestion made to any one of them that he was engaged in a conspiracy, nor was the initiator or the active mover of the conspiracy indicated, except in so far as the Judge himself points to the lady.

6. In these circumstances their Lordships are of opinion that the learned Subordinate Judge was not entitled to attribute to the original plaintiff and her witnesses conspiracy and perjury, unless the story told by them, coupled with the surrounding circumstances, was of itself so unnatural and improbable that only one conclusion—viz., conspiracy and perjury—was reasonably possible.

7. In his judgment the Subordinate Judge has conveniently grouped the evidence in stages, and the High Court has dealt with the learned Judge's criticisms in each stage seriatim. The first stage related to the existence of any occasion for the making of the will, and the second stage dealt with the alleged object in view in making the will. The Subordinate Judge gave his reasons for thinking that there could be no genuine occasion for making the will or for the selection of Bala Kunwar as the object of the testator's bounty. Their Lordships are content with the criticisms of the High Court on these reasons and their disagreement with the Subordinate Judge when he stated, at the close of his criticisms on, the second stage, "All this leads me to look at the whole story with a suspicious eye."

8. The third stage of the evidence dealt with by the Subordinate Judge related to the execution of the will, and his comment on this stage was "Equally suspicious are the circumstances attending the alleged execution of this will." Again their Lordships agree with the criticisms by the High Court of the learned Judge's

reasons for his conclusion, and it is unnecessary to repeat them.

9. The fourth stage related to the conduct of Lachmi Kuer and Bala Kunwar after the death of Dushashan, and their Lordships are of opinion that there are some points in their conduct that are open to legitimate comment, viz., the failure of Lachmi Kuer and Bala Kunwar to rely on the will in their respective applications for mutation in 1912 and 1921 respectively, and the dilatoriness of Bala Kuer in invoking the aid of the Court for recovery of the will in 1921. But, in their Lordships' opinion, any unfavourable comments which can arise in these respects are far from being sufficient to justify the discrediting of the plaintiff's witnesses. It does not appear to have been a matter of much moment to Lachmi Kuer whether she got the estate by inheritance or under the will, and it is not certain that Bala Kunwar was personally aware of the terms of the application for mutation which was signed on her behalf by Rup Ram. As regards the third ground of comment, it should be remembered that both Courts accepted it as proved that Bala Kunwar had disclosed the fact of the will in her favour to the police on January 9, 1921.

10. The last matter on which the Subordinate Judge laid stress was the fact that the will was neither publicly registered nor privately deposited with the Registrar for safe custody. Their Lordships agree, as also did the High Court, that this affords ground for serious comment, especially in view of the evidence, on behalf of the plaintiffs, of Dushashan's anxiety for its safe-keeping, but their Lordships agree with the High Court that such comment is insufficient to justify disbelief of the strong and substantial body of evidence on the plaintiff's behalf.

11. Their Lordships are accordingly of opinion that the appellants have failed to produce sufficient grounds for discrediting the plaintiff's witnesses, and the appeal must therefore fail. But two further points were raised during the debate before this Board, both of which arose out of the death of Bala Kunwar since the date of the decision of the High Court, which has brought into prominence the question of the succession to the estate of Dushashan on her death. The appellants claimed that Bala Kunwar had only a life estate and that on her death the reversioners would be entitled to the property on their suing for possession. The appellants desired to have it made clear that the present suit in no way determines who are entitled to the reversionary interest, and the respondents desired to have the question of the nature and extent of Bala Kunwar's interest under the will, which they maintained to be as yet undetermined, remitted for further enquiry and decision.

12. In their Lordships' opinion it is clear that the present suit does not determine who are entitled to the reversionary rights in the estate of Dushashan; this is made clear by the fact that the second issue, under which the question was raised, was struck out by the Subordinate Judge as being unnecessary for the purposes of the suit. As regards the nature and extent of Bala Kunwar's interest under the will, this matter is determined by the judgment and decree of the High Court to have been a provision for Bala Kunwar during her life, and no cross-

appeal has been taken by the respondents. But, apart from that, it may be noted that the second part of the issue which was tried raises the question of the plaintiff's interest under the will, and their Lordships are entitled to assume that every witness who could speak to the terms of the will, and was available, was called by the plaintiff.

13. Their Lordships therefore see no ground for remitting the case for a further inquiry into the extent of the interest of Bala Kunwar, which must be taken as decided by the judgment of the High Court.

14. Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed and that the decree of the High Court dated November 14, 1927, should be affirmed. The appellants will pay the costs of Man Sing who alone appeared as a respondent in this appeal.