
(1973) 05 GAU CK 0002

In the Gauhati High Court

Case No : First Appeal No. 49 of 1971 (Probate)

Guneshwar Chutia

APPELLANT

Vs

Haren Chutia and others

RESPONDENT

Date of Decision : 21-05-1973

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)
Succession Act, 1925 — Section 2, 2(f), 2(h), 59

Citation : AIR 1974 Guw 73

Hon'ble Judges : R.S. Bindra, J

Bench : Single Bench

Advocate : K. Lahiri, D. Choudhury, P.C. Gayan and A.K. Pookan, for the Appellant; J.P. Bhattacharjee, T.C. Borgohain and Prasanta Kr. Goswami, for the Respondent

Final Decision : Allowed

Judgement

R.S. Bindra, J.—This appeal by Guneshwar Chutia is directed against the judgment dated 17-5-1971 of the District judge, U. A. p., Jorhat. by which he dismissed the appellant's petition for grant of probate in respect of will Ext. 1, dated 4-3-1956, alleged to have been executed by his mother Srimati Maniki Chutiani. The prayer for probate was resisted by Srimati Kanful Chutia, a daughter-in-law of the testatrix, and her two sons. Haren Chutia and Bhuban Chutia. Srimati Maniki was the widow of Roseswar Chutia who left as his heirs, besides his widow, two sons Guneswar Chutia, the present appellant, and Ratneswar Chutia. This Ratneswar had predeceased his mother Srimati Maniki and was survived by his widow Kanful and the two sons Haren and Bhuban. The defence set up by the heirs of Ratneswar was that Srimati Maniki had not executed any will nor she had the sanction of law to make a will in respect of the property allegedly bequeathed by her. It was also alleged that Guneswar had exercised undue influence on his mother, who was living with him in the matter of procuring the will, and as such the document propounded by him (Guneswar) cannot operate as a will and the last testament of Srimati Maniki. Another

objection raised by the widow and the sons of Ratneswar was that Srimati Maniki had only life interest in the property mentioned in the will and so could not have disposed of that property by a will in face of Section 14 (2) of the Hindu Succession Act, 1956, hereinafter called the Act.

2. The District Judge settled the following issues between the parties:

1. Whether the alleged Will was duly executed and attested ?
2. Whether late Maniki had any capacity to give away property to the petitioner by testatrix (sic) and endowment under the provision of law ?
3. Whether the alleged will was collusively obtained by exercising undue influence ?
4. Whether the petitioner is entitled to get probate of the will ?

3. The will Ext. 1 having been executed on 4-3-56, which was before 17-6-1956 when the Act came into force, the District Judge held, while dealing with Issue No. 2, that Srimati Maniki had only widow's limited interest in the property described in Ext. 1 and as such she could not have made a will in respect of that property. Under issues Nos. 1 and 3 the Court held that Srimati Maniki never meant to execute any will and that the document Ext. 1 had been secured from her by Guneswar by exercising undue influence over her. On the basis of the findings reached on issues Nos. 1 to 3, the District Judge adjudged that Guneswar was not entitled to claim probate of the will Ext. 1.

4. The appellant's Counsel Sri K. Lahiri challenged all the three findings reached by the District Judge on the basis of which he had denied the probate to the appellant. Sri Lahiri vehemently urged that the due execution and attestation of the will Ext. 1 had been established beyond reasonable doubt, that there was no material on the record to support the finding that Guneswar had exercised any undue influence on his mother to secure the will, and that the Court had grievously erred in holding that Srimati Maniki had only a limited Hindu widow's interest in the property. After carefully examining the evidence on record and weighing the arguments addressed at the bar, I have reached the conclusion that it is not possible to maintain either of the three findings returned by the learned District Judge.

5. In order of priority the question that must first be answered is whether Srimati Maniki had widow's limited interest in the property described in the document Ext. 1. or she had acquired full ownership thereof by the time of her demise on 26-5-1957. The answer to the question posed will obviously be determined on the interpretation of Section 14 of the Act and the source from which the property described in Ext. 1 had come into possession of the testatrix. It was not disputed either at the trial or in this Court that that property originally belonged to Ratneswar, the husband of Srimati Maniki. It appears that after the death of Ratneswar some disputes cropped up between Srimati Maniki and her daughter-in-law Kanful and the latter's two sons respecting succession to the estate of

Roseswar. That dispute culminated in Title Suit No. 8 of 1950 instituted by Srimati Maniki against her daughter-in-law Kanful and her two sons. Ext. Ka is the copy of the Judgment given by the Munsiff, Jorhat, in that suit. Srimati Maniki had pleaded in that suit that she had acquired 1/3rd share in the estate of her husband but Kanful and her two sons had managed to get mutation in which she (Maniki) was allotted only one pura of land out of the entire estate of Roseswar, and that mutation had greatly jeopardised her rights in the estate of her husband.

The defence set up in that suit by Kanful and her two sons was that Ratneswar, the younger son of Roseswar, had separated from his father about two years after his marriage, that at that time Srimati Maniki was given one pura of land by her husband and the rest of the estate owned by Roseswar was given by him equally to his two sons Guneswar and Ratneswar, and that as such Srimati Maniki was not entitled to claim more than one pura out of the estate left by Roseswar. The Court negatived that defence of division of property and awarded Srimati Maniki a decree declaring her ownership to one-third share in the estate of her husband, besides granting her a decree for joint possession to that extent. No appeal was filed against the decree that followed the Munsiff's judgment dated 29-9-1950 in Title Suit No. 8 of 1950. However, Sri Bhattacharjee, representing the respondents herein, urged two points respecting the effect of that judgment and the decree "that followed it and the law prevalent in Assam at the time of the death of Roseswar.

Firstly, it was submitted that since Roseswar was governed by Dayabhaga school of Hindu law his widow did not acquire any interest in the estate left by him, he having been survived by two sons, and this despite the fact that the Hindu Women's Rights to Property Act 1937, a Central Act, was operative in Assam at the time of the death of Roseswar. This latter Act, Sri Bhattacharjee canvassed, applies only to properties other than agricultural lands as held by the Federal Court and as such Srimati Maniki could not have inherited one-third share in the property of her husband as urged on behalf of the appellant Guneswar, that estate being almost exclusively comprised of agricultural lands. The second point raised by Sri Bhattacharjee was that the judgment dated 29-9-1950 clearly restricted Maniki's rights to the one-third share in the estate of her husband by stating that Maniki "is, hereby directed not to waste or dispose of her share except on bona fide legal necessity having regard to the fact that some of the reversioners, viz., defendants Nos. 2 and 3 are minor orphans." I find merit neither in the first submission made by Sri Bhattacharjee nor in the second.

6. The Assam State Legislature placed on its Statute book in the year 1943 an Act called "The Assam Hindu Women's Rights to Property (Extension to Agricultural Land) Act. being Act No. XIII of 1943. It is mentioned in the preamble of that Act that its enactment was necessitated by the fact that it had been established that the Hindu Women's Rights to Property Act, 1937, and the Hindu Women's Rights to Property (Amendment) Act. 1938, do not operate to

give the widows better rights in respect of agricultural lands. By this Act XIII of 1943 the Assam Legislature extended the definition of the term "property" used in the two Central Acts of 1937 and 1938. The term "property" was now to include, and deemed to have always included, agricultural land. When this Act XIII of 1943 was brought to the notice of Sri Bhattacharjee he dropped his objection that Srimati Maniki could not have inherited one-third share from her husband's estate in terms of the Hindu Women's Rights to Property Act. 1937, and I think that that was the only right course to follow.

7. However, Sri Bhattacharjee persisted in the validity of his second argument that the judgment dated 29-9-1950 had restricted the right of Srimati Maniki in the one-third share she had inherited in the estate of her husband. It is correct that while discussing Issues Nos. 2 and 3 the Munsiff had observed that since Guneswar and the two sons of Ratneswar were reversioners of Srimati Maniki and Ratneswar's sons were minors, Srimati Maniki should not be permitted to transfer her one-third share she had inherited in her husband's estate except for bona fide legal necessity. But this restriction on her right of disposition remained confined to the discussion, made under Issues Nos. 2 and 3 and was not carried to the operative part of the judgment. That part of the judgment reads:

The result is that the suit stands decreed on contest against defendants Nos. 1, 2 and 3. But considering the circumstances under which these defendants are living, I make no order as to costs. Plaintiff's right, title and interest in respect of 1/3rd share in the property in suit is hereby declared and she is further declared entitled to joint possession along with the other sharers in the property to the extent of her 1/3rd share.

It is not without significance that Kanful and her two sons have not placed on the record a copy of the decree passed by the Munsiff in Title Suit No. 8 of 1950. I, therefore, feel justified in assuming that that decree does not contain any restriction on the right of Srimati Maniki to dispose of the property inherited by her from her husband. If any finding given in the judgment is not carried to the decree, against which alone party adversely affected can go in appeal, it does not have any practical value. Therefore, I negative the contention that the decree passed in that suit had restricted the rights of Srimati Maniki in the manner now claimed.

8. This brings me to the consideration of another argument urged by Sri Bhattacharjee. This argument was rested on the provisions of sub-section (2) of Section 14 of the Act. Sub-section (1) of that Section states that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. Sub-section (2) of that section provides that nothing contained in subsection (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument of the decree, order or award prescribes a restricted estate in such property. It was the

contention of Sri Bhattacharjee that sub-section (2) being in the nature of a proviso or an exception to what is enacted in sub-section (1), and that since Srimati Maniki had acquired one-third share in the estate of her husband pursuant to the decree passed by the Munsiff in Title Suit No. 8 of 1950, and not in any other manner, her rights in that property must be governed by "the provisions of sub-section (2) of Section 14 rather by its sub-section (1).

If that is "the legal position, Sri Bhattacharjee submitted further, the restrictions on the right of disposal of Srimati Maniki mentioned in the Munsiff's judgment would come into play and Srimati Maniki in that event would have no right of testamentary disposition over the property. I regret my inability to accede to any part of the submission made by Sri Bhattacharjee. I have concluded in the preceding paragraph of this judgment that imposition of restriction on the right of disposal of Srimati Maniki over her one-third share in the estate of her husband never took legal shape. The decree actually awarded to her is not proved to contain any such restriction. Therefore the postulate on which the argument of Sri Bhattacharjee was founded vanishes into thin air and with that crumbles the argument itself. Moreover, we have the decision of the Supreme Court in the case Seth Badri Prasad Vs. Srimati Kanso Devi, , to the effect that the word "acquired" used in sub-section (1) of Section 14 has to be given widest possible meaning, that sub-section (2) is more in the nature of a proviso or exception to sub-section (1), and that sub-section (2) comes into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any preexisting right in the female Hindu who is in possession of property.

9. It was admitted In Title Suit No. 8 of 1950 by all the members of the family that the property involved therein had come to their hands from Roseswar. The defence set up by Kenful and her two sons that Roseswar, had effected partition during his life time, that he had given only one pura of land to his wife Maniki, and that the rest of his land had been equally divided between his two sons was disbelieved by the Court. Therefore, there is no escape from the conclusion that the declaration of ownership granted to Srimati Maniki in that suit to the extent of one-third share in the estate of her husband was in virtue of her heirship to her husband and not in virtue of the decree made therein. It cannot be urged in the background of the circumstances just listed that Srimati Maniki had acquired the property for the first time in any of the methods indicated in sub-section (2), or that she had no "pre-existing rights", to use the words of the Supreme Court in the case of Seth Badri Prasad Vs. Srimati Kanso Devi, , in the property left by her husband when the litigation ensued in the year 1950 between the heirs of Roseswar.

10. I feel tempted to refer to a recent Division Bench judgment of the Bombay High Court reported in Bapusaheb Bhausaheb Patil and Another Vs. Gangabai and Others, . It states that sub-section (2) of Section 14 covers only those cases of grants where the interest in the grantee is created by the grant itself, or, in

other words, where the gift, will, instrument, decree, order or award is the source of origin of the interest created in the grantee. Where, however, the instruments referred to above are not the source of interest created but are merely declaratory or definitive of the right to property antecedently enjoyed by the Hindu female, sub-section (2) has no application; and it matters not if in such instruments it is specifically provided in express terms that the Hindu female had a limited estate or that she shall not alienate the property or that the property would revert on her death to the next reversioner. Such terms, the High Court observed, are mere reiteration of the incidents of the Hindu Law applicable to the limited estate.

The true criterion, in my opinion, for determining whether the case falls under sub-section (1) or sub-section (2) would be whether the interest or the right claimed by the female Hindu had actually been acquired for the first time by one of the methods mentioned in subsection (2) or whether she had possessed the property by virtue of a right which was independent and antecedent to the gift, will or any other instrument or decree or order of the civil court or the award wherein her right subsequently found mention. Since I am satisfied that Smt. Maniki had acquired right in one-third share in the estate of her husband by virtue of the Central Acts of 1937 and 1938 as amended by the State Act XIII of 1943, nothing said in the judgment dated 29-9-50 or the decree that followed that judgment, can have bearing on that right, and so the case would be governed by Section 14 (1) of the Act.

11. The next point debated in the Court relates to the interpretation of the expression "his property" used in cl. (h) of Section 2 and Section 59 of the Indian Succession Act. The term "will" is defined in Section 2 (h) to mean the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will. Shri Bhattacharjee submitted for the respondents that the expression "his property" connotes and means the property owned by the testator on the date he makes the will, and added that if the testator was not the owner of the property made subject of the will on the date of the execution of the will then the document would neither be a will nor will it have any legal effect. Having said that much Sri Bhattacharjee proceeded further to state that since, by common agreement, Srimati Maniki was not the owner of any part of her husband's estate on 4-3-1956. the date on which the will Ext. 1 was executed by her, and which was before 17-6-56 when the Act came into force, the document Ext. 1 is neither a will nor it affects the property mentioned in it.

Sri Lahiri, on the other hand, urged that since by the date of her death, which took place on 26-5-1957. Srimati Maniki had acquired full ownership of the property inherited from her husband in terms of Section 14 (1) of the Act. the document Ext. 1 legally constitutes a will and the Court has to effectuate the intentions of the testatrix as outlined in that document. Another point urged by

Sri Lahiri was that it is not the function of the Probate Court to determine whether or not the testator was the owner of the properties bequeathed by the will and whether or not the bequest is good or bad. In support of this last submission Sri Lahiri cited the Supreme Court decision in *Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others*, .

12. What happened in the last mentioned case was that though the execution of the will had been held duly proved the probate was denied to the executor on the basis "that the disposition contained in the will in favour of Thakurjee was void for uncertainty" and "was not expressive of any definite intention and was therefore not a will as defined in Section 2 (h) of the Indian Succession Act". The Supreme Court, on disagreeing with that finding of the Probate Court and order of the High Court which had affirmed that finding, happened to observe: "The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with the law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court." Shri Bhattacharjee was unable to cite any authority of the Supreme Court to the contrary.

Therefore, it is apparent that the function of the Probate Court is limited only to determining whether the will propounded before it had been duly executed and attested and whether at the time of such execution the testator had sound disposing mind. Apart from that, I may add, the Probate Court will have to determine whether the document described as the will and testament of the testator is really in the nature of a will and is not a document disposing of the property in any other manner. It is in order to mention that the term "probate" is defined in Section 2 (f) of the Act to mean the copy of a will certified under the seal of a Court of competent jurisdiction with the grant of administration to the estate of the testator. This definition also indicates the legislative intention regarding the extent of the function which a Probate Court has to discharge when moved for grant of a probate.

In my opinion, the only function of the Probate Court is to find out whether the document set up as a will is actually a will, whether it had been executed and attested by the alleged testator, and whether he had a sound mind and was not a minor. This conclusion draws support not only from the Supreme Court decision in *Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others*, but also from Sec. 59 of the Act which unequivocally prescribes that every person of sound mind not being a minor may dispose of his property by will.

13. The argument of Sri Bhattacharjee that the expression "his properly" used in Sections 2 (h) and 59 of the Act means the property owned by the testator on the date of the execution of the will is in a way negated by the just mentioned decision of the Supreme Court. The argument looks devoid of merit otherwise too. It cannot be gainsaid that an individual has a right to make the will quite in

advance of his death and that normally it is so done. I feel quite sanguine that the testator can make a bequest not only of the properties owned by him on the date of the will but also of the properties which he may acquire after that date and before his death. One can easily visualise a case, to illustrate the point, of an affluent childless widower surviving a heart attack and apprehending repetition of it and the possibility of losing his life, taking a decision to make a will respecting his properties in favour of the person who had served him sincerely during the crisis that stared him in the face.

Since such a testator is likely to acquire more liquid wealth from the immovable properties owned by him on the date of the will, as also from the business and profession that he was then engaged in. he obviously cannot predicate on the date of the execution of the will itself what shall be the exact dimensions of his properties, movable and immovable's, on the date of his demise. If the argument of Sri Bhattacharjee were to prevail then the testator in the illustrative case would be entitled to make will only in respect of the properties of which he is owner on the date of the execution of the will and not in respect of properties which he may acquire in between that date and the date of his death. The argument of Sri Bhattacharjee in ray opinion appears to be self-defeating for Section 59 clearly permits every person of sound mind to make a bequest of the whole of the property that he may happen to own.

Therefore, that argument has to be negated not only from the standpoint that it is not logical because it robs an individual his right to make a will respecting property which he may acquire between the date of the will and his death, but it is also not sustainable on the plain wording of Section 2 (h) and Section 59 of the Act. What the two provisions of the law contemplate is that a will can be made in respect of the property which the testator may own on the date of his death, and not necessarily only of the property of which he happens to be the owner on the date he makes the will. Wills are in the nature of ambulatory documents not only in the sense that the testators can scrap or amend them at their sweet will but also from the standpoint of the fortunes of the legatees thereunder. Their fortunes may dwindle if after the will the testator expends or transfers any part of his cash assets or immovable and movable properties, or they may swing up if he acquires more properties of either description. The legislature gives him free and absolute hand in making a bequest of all that he may own at the moment he closes his eyes never to open them again.

14. The point under discussion does not appear to be *res integra* either. Sri Lahiri cited *Smt. Ladhi Bai Vs. Thakur Shriji and Others*, , wherein it was held that the will made by Srimati Godawari (of that case) on 24-4-1956, when she was a limited owner and had no right to bequeath the property, was perfectly valid because Smt. Godawari died on 17-8-1956 by which date the Act had come into force and her limited estate had been converted into one of full ownership. Sri Bhattacharjee very frankly conceded that he had not been able to lay hand on any authority laying down a contrary principle. The facts of *Smt. Ladhi Bai Vs.*

Thakur Shriji and Others, are on all fours identical with the facts of the case in hand. I respectfully agree with the view expressed therein by the Rajasthan High Court. It would therefore follow that both on principle and authority there is no merit in the argument raised by Sri Bhattacharjee. Nor it gathers support from any provision of law.

15. This takes me to the consideration of the last question, namely, whether the execution and attestation of the will have been proved by the evidence on record. Guneswar entered the witness-box himself and also happened to examine Kamal Saikia P. W. 2, the scribe of the will Ext. 1. and Dibakar Sarma P. W. 3, an attesting witness thereof. Dibakar Sarma deposed that the will Ext. 1 was prepared by the petition writer Kamal Saikia according to the directions of Srimati Maniki, that after the will was prepared it was read over to her, that she thereupon placed her thumb impression on the document and that that event was followed by himself and the other attesting witness Radhanath placing their signatures on the will at the instance of Srimati Maniki. To the same effect is the testimony of Kamal Saikia and of Guneswar Chutia. We have it from the statement of Guneswar that Dibakar Sarma and Radhanath are his neighbours but in no way related to him. Radhanath, it has come in evidence, has died. It may be mentioned that Kamal Saikia is a professional deed writer of Jorhat, that Dibakar P. W. 3 is a retired teacher, while Radhanath, the other attesting witness, had retired from some Municipal post.

Therefore, all the three witnesses connected with the preparation of the will are proved to be men of status and since neither of them was either connected with the testator or the legatee, nor was inimical towards the respondents herein, there appears to be no valid reason for not taking the statements of Kamal Saikia and Dibakar Sarma at their face value. The Probate Court made much of the fact that Guneswar happened to affirm that Srimati Maniki wanted "to make a paper" respecting her property, and on that basis it held that it was easy to conclude that she had no intention of making a bequest of her property. I think it would be too narrow and uncharitable interpretation of the statement made by Guneswar. I also believe that that statement has been torn out of the context in which it was made and then misinterpreted. The exact words used by Guneswar were that "The old woman told that she would only execute a deed". However, that sentence was preceded by the affirmation: "The two witnesses had arrived before Kamal Mahari's arrival. My mother had invited both of them. The old woman told that she would get one will written during her life time. Otherwise it would create trouble in the future."

Then follows the sentence on which the Probate Court placed reliance in support of its conclusion and that sentence was followed by the statement that "The old woman put her thumb impression after the will was written." Evidently when the statement of the witness is read as a whole it clearly indicates that Smt. Maniki wanted a will to be prepared and that it was the will which was executed by her on 4-3-58. If there is any scope for doubt on the point arising out of the

statement of Guneswar, though I cannot share that view, it is cleared by the concordant statements of Kamal Saikia and Dibakar Sarma to the effect that Smt. Maniki had told them that she wanted to make a will, that the will Ext. 1 was prepared according to her directions, that the will was thumb marked by Srimati Maniki after the same had been read over to her, and that the two attesting witnesses signed the will in token of its attestation at the express desire of Srimati Maniki. Hence I have no misgivings that Srimati Maniki meant to execute a will and she did execute one, the same being Ext. 1. The District Judge, I would like to emphasise, opened the discussion of Issues Nos. 1 and 2 by the observation that "From the evidence of P. Ws. 2 and 3 it appears that the will was executed by Srimati Maniki and that it was duly attested." I cannot account for his throwing away the will after having given that opinion about the testimony of P. Ws. 2 and 3.

16. Sri Bhattacharjee laid stress on the facts that Srimati Maniki had been living with Guneswar at the time she is said to have made the will, that Guneswar happens to be the sole legatee under the will, and that it was he who admittedly had made all arrangements in connection with the preparation of the will, and canvassed on the basis thereof that the will must be taken to be surrounded by suspicious circumstances and it should not be acted upon unless those suspicions are clearly removed. *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, , where, amongst other observations, it was stated that if it is shown that the propounder has taken a prominent part in the execution of the will and he has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the suspicion by clear and satisfactory evidence.

Undeniably Guneswar is the sole legatee, and it is not in dispute that he had taken prominent part in the execution of the will, and he also happens to be the propounder of it. However, those facts in the context of the circumstances of the case do not cast any suspicion respecting the genuineness of the will. Srimati Maniki had two sons and the younger of the two had died during her lifetime. Sometime after his death his widow and his two sons not only took up separate residence but also entered into litigation with her. Her daughter-in-law Kanful and the latter's two sons, who all happen to be respondents herein, had managed to get half of the estate left by Guneswar mutated in their names and that circumstance had forced Srimati Maniki to file the Title Suit No. 8 of 1950 for vindication of her right to 1/3rd share in the estate of her husband. That suit was decided in her favour on 29-9-1950. The decree passed in that suit was never challenged by the respondents of this appeal though it went against them. Srimati Maniki must have felt rather sore over the manoeuvres of her daughter-in-law and the latter's sons to deprive her of her legitimate share in the estate of her husband.

In the background of these circumstances it is no surprise that Srimati Maniki decided to make over the whole of the property left with her to her son

Guneswar with whom she was putting up in her old age and who was looking after her. Certain statements made by Kenful as D. W. 1 in the present suit lend weight to the conclusion that the will had in fact been executed by Srimati Maniki. In her cross-examination Kenful affirmed "I do not know how long before the death of my mother-in-law the will was executed". This statement is consistent with Guneswar's stand that his mother had made a bequest. Kanful also admitted that her mother-in-law was an old woman, that she was jointly living with Guneswar, and that she had been lying ill for a long time. She also admitted that she had heard about the will from the elder brother of her husband, who obviously could be none other than Guneswar. I, therefore, feel satisfied "that the suspicious circumstances, if any, are sufficiently explained and that the valid execution and attestation of the will are proved beyond doubt.

17. No other point was urged in support of the appeal.

18. In the result, the appeal succeeds and on allowing the same I set aside the order of the learned District Judge and direct that probate of the will Ext. 1 be issued in favour of Guneswar Chutia. Taking all the factors into consideration, I however, leave the parties to bear their own costs in both the Courts.