

(1922) 06 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 5 of 1920

Palchur Sankarareddi and others

APPELLANT

Vs

Palchur Mahalakshmama and others

RESPONDENT

Date of Decision : 16-06-1922

Acts Referred:

Citation : (1922) AIR(PC) 315

Hon'ble Judges : Ameer Ali, John Edge, Phillimore, Dunedin, JJ.

Advocate : H. S. L. Polak., Shephard, Walkers, Chapman, for the Appearing Parties.

Judgement

Lord Dunedin

One Palchur Chenchurragavareddi, an inhabitant of a village in the district of Nellore, died on the 26th October, 1914, at the age of about 60, and was possessed of considerable property. He left a widow, but no children and no near relatives except such as were relations of his wife. His wife had a sister, who had a son, Vemireddi Babureddi. On the 9th December, 1914, his widow and his nephew presented for registration a will before the Sub-Registrar.

The registration was opposed by the appellants in the present suit, who allege that they are the nearest agnates of the deceased and as such are entitled in reversion to succeed to the estate after the termination of the widow's interest, upon the ground that they conceived that the deceased had died intestate. Registration was refused, as it was considered that sufficient proof had not been given that the will was duly executed, and this decision of the Sub-Registrar was confirmed, on appeal by the Registrar.

The present appellants brought a suit for a declaration that they had the position of nearest agnates, and that the so-called will was not executed in fact, and was, if executed, executed by the testator while in a condition of unsound mind

To this suit defences were lodged for the widow and Vemireddi Babureddi, who was the chief taker under the will, in which they alleged that the will had been

duly executed. A counter suit was brought by them to have it declared that the will was genuine, and also to have the Registrar enjoined to register the Will. These two suits came before Subordinate Judge.

In this state of matters, what might be called the natural order would be first to take up the question of whether the parties who were attacking the will had any title to raise the question, because, of course, unless they had such title - that is to say, unless they proved their relationship - they had no right to be heard, whether there was a will or not. But the learned Judge approached the questions in the other order, and after a prolonged investigation he held that the will had not been executed at all, and was a forgery. He then took up the question of relationship, and held that the relationship had not been sufficiently proved.

In the result, therefore, he dismissed both suits. On appeal, naturally the High Court took up the matter in the same order as the learned Subordinate Judge had done, and they came to the conclusion that the will had been duly executed. That being so, it did not become necessary to go into the question of relationship. The High Court gave these respondents here a decree in their suit and dismissed the appeal in the other suit.

From these decrees these consolidated appeals are brought to His Majesty in Council. The question of whether the testator was in a sound state of mind had really dropped out. As the Subordinate Judge found that the Will had not been executed, it was not necessary for him to go into the question of mental testamentary capacity ; it was very feebly insisted upon before the High Court, and it was, quite rightly, entirely given up before their Lordships,

Sir William Finlay, who argued the case exceedingly well, really put the only point in the case. He said that the execution of the will was necessarily a question of fact; that the fact depended in such a case upon credibility; that the Judge who had heard the witnesses had come to a certain conclusion; and that there was no sufficient reason for the High

Court to alter that. He quoted certain well-known authorities which, although authorities in the Courts in India, really represent a cannon which is equally good in every system of law, namely, that when you have to deal with a pure question of credibility very great weight ought necessarily to be given to the judgment of the Judge who saw the witnesses.

Their Lordships are not at all likely to throw any doubt upon that doctrine, nor do they think that the High Court threw any doubt upon it. It was just as alive to the doctrine as are their Lordships.

There are two ways in which one may approach the question of credibility. When the question is whether a witness is speaking the truth or not, light is thrown upon it by the demeanour of that witness in the box by the manner in which he answers questions, and by how he seems to be affected by the questions that are put to him, and so on. No doubt there the trial Judge has an advantage

which cannot possibly be shared by any appellate Court. But when the views upon credibility are founded upon argumentative inferences from facts which are not disputed, then the Court of Appeal is really in just as good a situation as the Judge of first instance, Their Lordships think that it is quite evident from their judgment that the High Court entirely recognised this, and they agree with the criticisms which were made by the High Court upon the judgment of the learned Subordinate Judge.

There really were two matters bearing upon the question of whether the will was really the will of the deceased or not. The first was inspection of the will itself. It was said against the will that the signature of the deceased was in a shaky hand. It is to be noted that it was not said that the signature was uncharacteristic, but merely that it was shaky. Their Lordships do not think that that is an objection in which there is much weight. Indeed, so far, it seems almost in favour of the will being genuine, because, if a man sets himself to commit a forgery, he would naturally try to make the signature as exactly like the genuine signature as he could and certainly would not introduce shakiness into the signature. The shakiness in the signature is perfectly easily accounted for by the fact that the will was only made a few days before the testator's death, and that he was very ill and probably suffering a good deal of pain. Then comes the other matter the story itself. As the learned Subordinate Judge says, the story of execution of the will is quite perfect. The question is whether the story can be taken as true or not. It is spoken to by quite a considerable number of witnesses, and the point is whether there are really any sufficient criticisms against those witnesses. The appellants, in their story, are in rather a curious position. They do not wish to say what in most cases would be the natural thing to say. This man had no intention of making a will at all; he meant to die intestate. On the contrary, they rather put in the forefront that this man had every intention of making a will, and there has been a great deal of evidence that there was a certain amount of hearsay, based, no doubt, on something that the testator had said, and which had been communicated to the witness Chengiah against whom there is nothing to be said that he had some intention of devoting a very large portion of his fortune to a charity in connection with a school for boys.

Now this is a rather difficult position for the appellants to put themselves into, because the moment that they assert that there was another will they put themselves out of Court, because their only right to prevail is upon intestacy, and, therefore, they rather hint that it was most likely that the man would make a will, and then go on to say it is pretty apparent from what we have heard that if he did make a will, this is not the sort of will that he would have made. It is really the old position of wishing to wound and being afraid to strike.

Their Lordships cannot help thinking, and the appellate Court probably thought too, that unfortunately this notion that the deceased meant to make a will in favour of the school got so much into the mind of the learned Subordinate Judge that his judgment was swayed by that predominating opinion to begin with, and

that he then looked at each witness with a sort of idea of trying to find out why the witnesses would not be reliable, instead of beginning with the witnesses and then seeing if there was any special reason why they should not be speaking the truth.

Their Lordships do not propose to go through the matter by examining the evidence of each of the witnesses, because they entirely concur with a single sentence of the learned Judges in the High Court, who say this, speaking of the evidence of the various witnesses : "We do not find that enough has been shown to justify us in distrusting their evidence and in saying that they were all participants in a forgery."

There is another matter which has great weight, namely, the attitude taken by the widow herself. The widow herself propounded the will. It is quite true that in the later development of the case she no longer went along with the second defendant, who is now the second respondent in this case, and there has been light to a certain extent thrown upon her attitude.

It is quite evident that she was anxious for a certain disposition to be made of part of the property. She seems to have been willing to give up so much of her own life interest as was secured to her by the Will and she was anxious that the second respondent, who was the principal taker, should go along with her in order that a settlement should be made upon a relative of her own who was going to be married. When she found that the second respondent would not go along with her in that, she seems, so to speak, to have turned round, but only turned round in this way, that she absented herself; she did not take the active part of coming to the Court to deny that the Will had been executed, though when they came to the High Court she instructed her Counsel to go further.

Under those circumstances it is impossible not to remember her original attitude, and their Lordships are inclined to believe that her original attitude was prompted by the fact that she knew it was the truth.

For these reasons their Lordships think these consolidated appeals fail, and should be dismissed, and they will humbly advise His Majesty accordingly. The appellants will pay the costs of the second respondent who alone appeared.