
(1926) 07 PRI CK 0008

In the Privy Council

Case No : Privy Council Appeal No. 14 of 1923

Rawat Sheo Bahadur Singh

APPELLANT

Vs

Beni Bahadur Singh

RESPONDENT

Date of Decision : 01-07-1926

Acts Referred:

Citation : (1926) AIR(PC) 97

Hon'ble Judges : Ameer Ali, Atkinson, Viscount Dunedin, JJ.

Advocate : Watkinson and Hunter, T.L. Wilson and Co., E.B. Raikes, George Lowndes, B. Dube, L.De Gruyther, for the Appearing Parties.

Judgement

Mr. Ameer Ali, J.

The parties to this litigation are Hindus subject to the Law of the Mitakshara. Under this law the widow is entitled to adopt a son to her deceased husband provided he has left her permission for that purpose.

The suit in this case relates to the validity of the alleged adoption of the defendant by a Hindu lady of the name of Mt. Sukhraj Kuar. There is no question that in 1913 she made the adoption. The only question is whether her husband Jageshar Baksh Singh, a man of substance and position in the Rae Bareilly District of the United Provinces in India, had left her permission to adopt a son to him. Jageshar Bakhsh Singh died in December 1907. He had been suffering from diabetes for some years. In the early part of 1907 he is said to have had a paralytic stroke. It is the case of the defendant that Jageshar Bakhsh Singh got over his attack and was quite able to move about and look after his work ; and that in July 1907, he wrote out a Will in his own handwriting, to which he obtained the attestation of two persons, one being Lalta Prashad, who was zildar in charge of his estate ; the other, Bans Bahadur ; another employee. It is also alleged, on the defendant's behalf, that soon after the attestation of these two persons, Jageshar Bakhsh Singh went to a friend, a taluqdar of position named Mujib Haidar Khan, and got him also to attest the Will. The plaintiff, Sheo Bahadur Singh, charges the will to have been fabricated after

Jageshar's death. If this contention be right, his widow Sukhraj would have no power to adopt.

Apparently the defendant was about 5 years of age when he was adopted, and when this suit was instituted in 1915, he must have been only seven. A guardian ad litem was appointed for him by the Court, and the suit is being defended on his behalf by the guardian.

As already stated, Sheo Bahadur Singh, the plaintiff, questions the validity of the adoption and denies the authenticity of the Will. The defendant in his written statement, set out the facts connected with the execution of the Will and his own adoption. A replication was filed by the plaintiff in answer to the facts alleged in the written statement. On the evidence in the case it is fully established that the plaintiff and the other agnatic relations of Jageshar Bakhsh Singh lived in the same village or town ship, Panhona, where Jageshar Bakhsh Singh lived, and where he died, and where his widow, Sukhraj Kuar, resided until her death ; and although the plaintiff says in his evidence that during Jageshar Bakhsh Singh's illness from paralysis he frequently visited him, no mention was made in the replication about his total incapacity urged in the later stages of the proceedings to write or to do the acts alleged in the written statement.

The case went, to trial before the Sub ordinate Judge of Rae Bareilly. The plaintiff examined a certain number of witnesses to establish his relationship to the deceased. The case for the defendant was opened some time in June 1916, and on his side a number of witnesses were examined to establish the fact that the Will was written and signed by Jageshar Bakhsh Singh, and was duly witnessed by the witnesses whose names are borne on the document. The Sub ordinate Judge believed the witnesses for the defendant, and considered that the plaintiff and his witnesses gave false testimony in the case, and accordingly dismissed the suit.

On appeal before the Court of the Judicial Commissioner of Oudh, there was a difference of opinion. . The First Judicial Commissioner, Mr. Kanhaiya Lal, was of opinion that there was considerable suspicion attached to the execution of the document in question, and held that its execution by Jageshar Bakhsh Singh was not sufficiently proved. He accordingly held that the claim of the plaintiff should succeed. The Second Judicial Commissioner, Mr. Daniels, was of a different opinion, and agreed with the Subordinate Judge that the plaintiff's case was false, that the execution of the Will was conclusively proved, and that the suit should be dismissed. A decree was accordingly made dismissing the claim.

The plaintiff has appealed from this order to His Majesty in Council, and the arguments urged before the Subordinate Judge and in the Court of the Judicial Commissioner have been repeated before their Lordships.

They desire to observe at the very outset of their judgment what they have already mentioned, that the plaintiff and most of the agnatic relations of Jageshar Bakhsh Singh, if not all, who are more or less interested in the subject

of the Will in dispute, live in the same village, not far from the residence of the deceased and his wife Sukhraj. Sheo Bahadur, the plaintiff, states in his evidence that his house is about " two furlongs " from Sukhraj's house. He says further that he frequently visited the deceased when he suffered from the paralytic stroke in 1907. It is, to say the least, extraordinary that he should have forborne to put in the forefront of his case the allegation that Jageshar, at the time when the Will is said to have been executed, was totally helpless and utterly incapable of executing the document.

As Mr. Daniels, the Second Judicial Commissioner, points out in his judgment, it was only at a very late stage of the case that the genuineness of the Will was questioned on the ground of the physical incapacity of the alleged testator. He says as follows :

Even when the earlier witnesses of the respondent were examined there was no cross-examination as to the physical condition of the deceased, though these witnesses included Jag Prasad Vaid, the regular medical attendant of the deceased. At this point there was an interval of three months in the hearing of the case owing possibly to the Subordinate Judge's transfer, and it was not until July, 1916, that any serious intention to challenge the testator's physical capacity to execute the Will was disclosed. The appellant replies to this that he had not seen the Will and did not know that it purported to be in the testator's own hand. The Will had been filed in the mutation proceedings consequent of Sukhraj Kuar's death, the adverse order in which was the immediate occasion for the present suit ; and though it is true that neither the appellant nor his pleader was in Court on the date on which the Will was filed, it seems highly unlikely that he should have launched a suit of this importance without having taken some opportunity of seeing it or ascertaining its nature and contents.

The Subordinate Judge appears to their Lordships to be perfectly right in his observation that the challenge of Jageshar Bakhsh Singh's capacity to write the document or to put his signature to it was an afterthought. As both the trial Judge and the Judicial Commissioner have observed, the Will is a natural Will. Jageshar Bakhsh Singh was a Hindu ; he had the natural desire that he should have male progeny to duly perform the oblations necessary for his salvation in after-life. The document in dispute is couched in simple language written in the script with which he was familiar. It is not a complicated document, and the testamentary directions are simple and direct, such as a Hindu gentleman of substance would express. In the alleged Will the testator recites that he was 51 or 55 years of age and had no hope of having issue of his own, and was, therefore, desirous of adopting a son ; that he devised his property to his widow, Sukhraj, and gave her authority to adopt a son to him for the performance of the spiritual duties which would conduce to his benefit in the next world, and that the son was to take the estate after Sukhraj's death. Their Lordships do not see that there is any thing improbable in the wishes Jageshar Bakhsh Singh is alleged to have embodied in this document.

Starting with this probability, their Lordships desire to examine the evidence for themselves. (The judgment after discussing evidence proceeded.) Their Lordships consider that the affirmative evidence regarding the capacity of Jageshar to write the Will and its due execution and attestation is overwhelming.

Some point was made on the delay on the part of Sukhraj Kuar in making the adoption. Under the Hindu Law when power is given to the widow to adopt there is no obligation on her part to make the adoption at once. It is well known that it takes time and trouble to select a suitable boy. Horoscopes have to be consulted and the opinions of *Laudets* taken. There is nothing in this case to show that there was any undue delay in making the adoption, if delay can, under the law, be taken into consideration

A great deal of time appears to have been taken up in the Courts in India by speculative theories built on medical books without any facts established by the evidence in the case" to use Lord Watson's condemnation in the case of *Sajid Ali v. Ibad Ali* 1896 23 Cal. 1 : 22 I. A. 171 : 6 Sar. 627 (P.C.).

Before the Board, counsel very wisely abstained from the course which was reprehended in the judgment just cited. Their Lordships refer to it in order to help the Indian Courts to economize time in the trial of similar cases.

On the whole, their Lordships are of opinion that the judgment of the Subordinate Judge, affirmed by the Second Judicial Commissioner, is right, and they will accordingly humbly advise His Majesty that the appeal should be dismissed with costs.