

(1914) 07 CAL CK 0040
In the Calcutta High Court

Srimati Manorama Chowdhurani

APPELLANT

Vs

Soshi Mohan Das Majumdar and Others

RESPONDENT

Date of Decision : 06-07-1914

Acts Referred:

Citation : AIR 1915 Cal 419 : 28 Ind. Cas. 886

Hon'ble Judges : Holmwood, J;Chapman, J

Bench : Division Bench

Judgement

1. This was a unit for revocation of Probate of the Will of one Gobind Chandra Das Majumdar calling upon the executor to prove the Will in the presence of the petitioner.

2. The testator died on the 27th or 28th December 1883 of cholera in a boat and the Will was said to have been executed on the 27th December 1883. He left a widow and five minor daughters unmarried as well as two brother's sons, the objectors in this case who were then also minors. By the Will the widow got a life-estate with remainder to the brother's sons, and the daughters were given allowance for maintenance of Rs. 12 a year each. The petitioner Manorama Choudharani is the only one of the daughters who has borne sons, and she claims to come in, because, admittedly although general citations were issued and her mother obtained Probate of the Will, no separate guardian ad litem was appointed to represent the minor daughters or the minor brother's sons in the Probate proceeding. The eldest daughter Kusum Kumari, now a childless widow, was born about 1869; the elder brother's son Sari Mohan Das Mozumdar was born in 1872; the second daughter Kumndini was born in 1871; the petitioner was born in 1876; the fourth daughter Kadambini was born in 1880, and the younger brother's son Kamini Mohan Mozumdar was born in 1883. The fifth daughter is dead.

3. It is fully established by evidence that Siba Sundari, the widow of the testator, took out the Probate on the 20th March 1884, and in a rent suit in 1886 the Will was filed by her confidential servant Kali Kanta Biswas and returned to her. In

1887 the petitioner, then 11 years of age, was married, and. there is evidence that the Will was read out to her husband, a Floater's clerk who has since become a Vernacular copyist in the Munsif's Court at Lakhipur, and herself at the time of the marriage. In accordance with the terms of the Will Kusum Kumari, one of the daughters, gave receipts for her allowance to her mother in 1887 and to her mother and Khuri the mother of the objectors, jointly for the years 1888 and 1891. Two subsequent receipts of hers, the first given to her mother and Sari Mohan jointly and the second to her mother alone, have also been produced. Receipts of a similar nature granted by Kumudini for 1890 and 1901 are produced and from Kadambini for 1903. But the most important document is the receipt given by the petitioner herself in 1901 for Rs. 200, being the arrears of her maintenance for 16 years from 1885 to 1900 and three-quarters of her allowance of 1901. All these receipts clearly recite that her father, Gobinda, before his death executed a Will on the 18th Pous 1290 and in the said Will he made directions for payment of Rs. 12 annually to the recipient as allowance out of the profits of the estate. In 1909 the objectors, Sashi Mohan and Kamini Mohan, had occasion to bring a suit for accounts against Kali Kanta Biswas who was managing for Siba Sundari and for their own mother and they made Siba Sundari a defendant also. This appears to have annoyed Siba Sundari who separated from her sister-in-law and the objector and went over to the side of the petitioner and her husband and in 1910 this petition was brought making Siba Sundari alone a party. Upon this the objections came in and said that the petition was fraudulent and collusive and got up by Siba Sundari. At the trial Siba Sundari and all the surviving daughters denied the Will altogether and denied they had received, any allowance and supported the petitioner in her allegation that she had no knowledge of the Will of her father or of the Probate case until Kartic 1316, when she went to visit her father's house.

4. As regards the facts we may at once say that we have carefully perused the documents and can have no doubt that the receipt, Exhibit A, is in the handwriting of the petitioner herself, and the other receipts are genuine. Numerous specimens of the handwriting of the ladies have been produced in the shape of affectionate letters and post cards written by them to the objectors and to their own mother, the authenticity of which cannot for one moment be doubted, though the witnesses of the petitioner have had the audacity to deny all knowledge of them. It is clear from the correspondence that up till 1909 the sisters were on the most affectionate terms with their cousins, the objectors. One of the letters speaks of the objectors as the only hope of carrying on the father's name. We, therefore, find two main facts against the petitioner first that her petition is not bona fide but collusive and fraudulent, made solely as an answer to the suit for accounts against their mother and her agent, and secondly that no reasonable account is given of the circumstances which entitled the petitioner to re-open the Probate after so many years. The account she does give is entirely false, and as Siba Sundari herself undoubtedly obtained the Probate and they knew of it and acquiesced in it for many years, they must on

the authorities give some good and true reasons why they had not proceeded earlier. This doctrine is clearly laid down in *Hoffman v. White* 2 Phillim 223 which was cited with approval in *Merryweather v. Turner* (1844) 3 Curt. 802 where it was stated that the ground or principle upon which the Court proceeded in *Hoffman v. White* 2 Phillim 223 was that the petitioner was not barred by lapse of time, if he can show good reason why he did not proceed at an earlier period but if he does not show good cause, the Probate Court will not allow him to call in the Will after such a lapse of time. The same view has been taken by this Court in *Kunja Lal Chowdhury v. Kailash Chandra Choudhury* 7 Ind. Cas. 740 : 14 C.W.N. 1068.

5. It is argued that in all these cases there had been collateral litigation in other Courts to which the petitioner had been a party and was thereby saddled with knowledge and acquiesce. But it does not seem to us to matter by what facts such knowledge and acquiescence are established, for neither knowledge nor acquiescence nor lapse of time are of themselves operative as a bar to the proceeding which every person interested in the estate of the testator has a right to bring if they were not made parties in the Probate proceeding. What is held is that where knowledge, acquiescence and lapse of time are shown the petitioner must give some reasonable and true explanation of the delay, or in other words, the application must be made bona fide.

6. We are of opinion, apart from all authority, that our finding that this petition is a dishonest and vindictive proceeding supported by false evidence and not putting the true facts at all before the Court, is certainly a bar to the re-opening of the Probate obtained 30 years ago under circumstances which created no suspicion of a Will, the provisions of which have, been accepted by all the parties as reasonable and proper and such as the testator would be likely to make.

7. The appeal is, therefore, dismissed with costs. We assess the hearing fee at three gold mohurs.