(1937) 04 AHC CK 0024

Allahabad High Court

Case No: None

Babu Debi Bakhsh Singh		APPELLANT
	Vs	
Smt. Ashtbhuja Ratan Kunwar and Another		RESPONDENT

Date of Decision: April 15, 1937

Citation: AIR 1937 All 670

Final Decision: Disposed Of

Judgement

1. This is a first appeal against the issue of letters of administration in favour of an applicant by the learned District, Judge of Benares. The facts are that the property in question belonged to one Thakur Ambika Bakhsh Singh, Talukdar of Nanemau estate in the District of Pyzabad in Oudh. He died on 13th August 1905 in Fyzabad District. An application was made by Smt. Ashtbhuja Ratan Kunwar, his posthumous daughter aged about 23 years, on 11th April 1929, that is many years after his death, and her application is accompanied by a list of property which comprises the whole of the property of the deceased. This property is almost all in Oudh with the exception of one small area in Jaunpur District, No. 63 on the list, which is under proprietary right in Mauza Isapur in 75 acres odd. The value of this property is said to be very small, only Rs. 15 (see Collector''s report p. 24). The value of the estate on the other hand is stated in para. 10 of the application to be over four lakhs and in the report to be 8 1/2 lakhs. Now the application is for letters of administration with a copy of the will-annexed and the will said to be printed on p. 67 purports to have been executed by the deceased Ambika Bakhsh Singh on 1st October 1904, that is within a year of his death. The applicant is not entitled to possession under this will, but the will provides in para. 4 that if there be no son born, then Thakurain Dharam Raj Kunwar, the widow of B. Adya Bakhsh Singh, the brother of the testator, "shall be considered the owner of the estate". The will proceeded to state:
In her absence my senior wife should he entered, and even if she be dead then the name of my junior wife should be entered.

2. Then follows a paragraph where something has been cancelled in the will and it is stated:

After them this ''riyasat'' will be considered as having been divided among my daughters in equal Shares.... After them their children will remain in possession thereof.

3. At the death of the testator, there were surviving him Thakurain Dharam Raj Kunwar and both the wives of the testator. At the present time Thakurain Dharam Raj Kunwar is still alive and the junior wife is alive and the senior wife is dead. Mutation did not follow the provisions of the will and the will was not put forward at the time of the death but mutation was made for the senior wife. On no construction of the will could the daughter be entitled to possession at present specially in view of the existence of her mother who is in possession. The application for letters of administration was objected to by the present appellant before us, B. Debi Bakhsh Singh, who claims that he is the nearest reversioner of the deceased talukdar and an objection was also filed by respondent 2, Lal Bhupendra Narain Singh, who is the son of a daughter of Thakurain Dharam Raj Kunwar. We have already mentioned the point that only a small portion of the property exists in the judgeship of Benares and the question of jurisdiction arose in the Court of the District Judge. On pp. 27 and 29 there is an order of the District Judge of 25th February 1931 on the issue of jurisdiction in which he held that he had jurisdiction and that the petition should not be refused. That matter went in appeal before this Court, and on p. 87 there is an order of a Bench of this Court holding that the Court is not able to interfere because no appeal lay and it is not a case where interference should be made in revision u/s 115, Civil P.C. The matter of jurisdiction has however again been argued before us as it properly arises now that a first appeal has been brought in this Court. Now the importance of the question of jurisdiction is because of the provisions of Section 13, Oudh Estates Act of 1869. This section requires that a will by a talukdar of talukdari estate should be registered within one month of the execution and the present will has not been registered until 1920. The registration of the will would however not be necessary for the administration of the very small area of property in Jaunpur District. The provisions of the Succession Act of 1925 relevant to the matter are Sections 270 and 271, and these sections give a District Judge jurisdiction to exercise powers of granting letters of administration if there is any property within the area of his-judgeship, but it is stated:

It shall be in the discretion of the Judge to refuse the application if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

4. This applies in a case like the present where the deceased had no fixed abode: within the jurisdiction of the District Judge in question. "We consider that technically the District Judge had power to entertain the application and we do not consider

that it should have been necessarily dismissed for want of jurisdiction. But in our opinion the main issue in the case is whether the execution of the alleged will by the testator has been proved. Now there are two points which arise in this connexion. Firstly, the question whether the will has been produced from proper custody, and secondly, the question of whether the evidence produced by the applicant is sufficient to prove its execution. As regards production of the will, attention is invited to a letter printed on p. 75 signed by Mr. M. Keene, late Governor of Assam, then Under Secretary to the Government of the United Provinces and dated Allahabad, 25th January 1906, which states:

The undersigned is directed to acknowledge the receipt of a document dated 1st October 1904, purporting to be the will of Babu Ambika Bakhsh Singh, Talukdar of Nanemau, Sultanpur District, which has been transferred by the Government of India, Foreign Department, to this Government for disposal, and to say that the will should be registered under the Registration Act 3 of 1877.

To Babu Ambika Bakhsh Singh, Talukdar, Nanemau, District Sultanpur.

5. This letter shows that the Secretariat were under the impression that the talukadar was still alive although he had died on 13th August 1905. The correspondence with the Government of India cannot now be traced. It is not dear whether the will now tendered was the same document to which this letter refers as there is no endorsement by the Secretariat of the United Provinces on this will. There is something written in handwriting to the following effect in red ink : "P.B.R. No. 1036, Recd. 20.11.05".

6. It is contended that these words mean "Persian Branch Register" of the Government of India and indicate that the will was received on 20th November 1905. On the other hand, there is no official seal of the Government of India or signature of any officer on this endorsement and although such an endorsement might have been made on some will sent to the Government of India on that date, the endorsement might easily be copied by any one on to the will now tendered to the Court. The reason why this will was sent to Government is stated to be contained in the concluding para. 8 printed on p. 70 of the will in which it is stated:

I will keep this memorandum of will having enclosed it in an envelope at such a place that after my death no one except the three Thakurains have access to it and I will write a slip in Hindi giving instructions that whoever may find it should not disclose it but should at once get It posted in some distant post office, and probably she will do so. I have thought of this plan so that there may be. no friction among the three Thakurains.... The envelope in which this memorandum will be enclosed will bear an address so that it may be presented before His Excellency the Governor-General of India in Council and His Excellency will be graciously pleased to send it to that officer who will fully take into consideration, etc.

7. Now as the letter from the Secretariat appears genuine, there is no doubt that some will was sent in some such manner, but that is far from showing that it is the particular document now before us. The subsequent history of this will is given in evidence and the petitioner on p. 36 produced a witness, Raj Narain, who stated that he was the mukhtaram of Thakurain Sukhraj Kunwar:

In 1919 she got the original will (Ex. 5) and the letter from the Government. I got it in the box of Niaz Ahmad, former mukhtaram of the Thakurain. The letter from Government was attached to the will in the same box, The letter is Ex, 6. Niaz Ahmad died in 1919, and the box was opened after his death.... After reading the letter of the Government the Thakurain Sahib registered the will.... The estate was under the Court of Wards from 1909 to 1925. The Thakurain got the will registered without showing it to any officer. She did not show it to the Deputy Commissioner or to the Manager of the Court of Wards after registering it.

8. Now Thakurain Sukhraj Kunwar, although she is still alive, has not been produced to confirm this statement. In one point the statement is obviously wrong. It could not have been in 1919 that she got the will from the Government if it is the same to which the Secretariat letter on p. 75 relates, as that letter relates to 25th January 1906. There is therefore nothing to show where the will was between the years 1906 and 1919. On 17th January 1920 it was quietly presented by the junior Thakurain to the Sub-Registrar of Jaunpur at her father''s house and registered. Such an action is certainly peculiar as the will affects the whole property of the late talukdar; and as the estate of the talukadar was then under the Court of Wards in Fyzabad, the natural course for Thakurain Sukhraj Kunwar to take would have been to show the will at once to the Deputy Commissioner or the Manager of the Court of Wards on finding it, as is alleged, in 1919. Apparently however the witness means that it was with Niaz Ahmad for all the years between 1906 and 1919, and this theory appears absolutely impossible. Now the unreliability of this witness is shown by the fact that the opposite party, the appellant, filed on 8th February 1933 a copy of a judgment (p. 79) dated 3rd August 1927 which shows that Shah Niaz Ahmad died and was buried on 26th June 1927 in Fyzabad and that one Abdul Rashid Khan was prosecuted and fined by the District Magistrate for burying his body in his house within the city. There was also a death certificate on p. 77 filed to show that the death occurred on 25th June 1927. Now after this evidence had been filed on 9th February 1933, the appellant applied for further cross-examination of Raj Narain and the Court summoned him for further cross-examination. This statement is taken on p. 40 on 15th May 1933. When the witness was called for further cross-examination, he was of course aware that these documents had been filed in Court and he then withdrew his statement that Niaz Ahmad died in 1919 and admitted that he went away in 1918 and that he merely heard he died in 1919 and then broke open the box. There was evidence of Zafar Ahmad, the brother of Niaz Ahmad, to the effect that Niaz Ahmad died on 25th June 1927 at Fyzabad, and this is also confirmed by the evidence of Abdul Rashid Khan in whose house he died and

this witness was fined for burying him in his house. The story therefore, as put forward by Raj Narain, is shown to be false in the main particular where he contended that Niaz Ahmad died in 1919. This matter has been dealt with in a very summary manner by the learned District Judge who merely states on p. 44:

It was kept secret for a good time and found in the box of Niaz Ahmad, mukhtar of the estate, who had gone on leave and not returned and was therefore supposed to be dead,

and the Court assumed that there was no doubt as to whether the document sent to the Government of India was the same document and that matter was not discussed. We are of opinion that it cannot be said that the document has been produced from proper custody. There is nothing at all to show as to where the alleged document was during the years 1906 and 1919. If the document had been returned by the Secretariat with the intimation that it should be registered, we do not understand why the person to whom it was returned did not take that course of action in 1906. It is very difficult to understand how such a document could have come into the possession of Niaz Ahmad who was a mere mukhtaram of the Thakurain Sukhraj Kunwar.

9. We now turn to the other issue of importance, that is the evidence produced by the plaintiff that the will is a document executed by the late talukadar. Now the will itself on pp. 70 & 71 purports to bear the signature of Ambika Bakhsh Singh, talukadar, and of three attesting witnesses, Har Prasad Singh, Durga Datt Misir and Sukhpal Singh. The latter two are dead, and Udit Narain, who is stated by the endorsement to be the scribe of the will, is also dead. The evidence of Har Prasad Singh was taken on p. 34. He states that he was the treasurer or khazanchi of the talukadar and that the talukadar went to Jaunpur where his father-in-law lives. Now this father-in-law is the father of the junior Rani who was the mother of the present applicant.

10. The witness states that Udit Narain who was the clerk of Munshi Raj Keshore, Vakil, wrote out this will, that he received instructions from the talukadar a day or two before the execution and that he brought the will written out according to instructions and gave it to the talukadar who read over the will himself and made two cuttings in the will and then signed the will in the presence of the witnesses. Har Prasad Singh states that he was present and signed as an attesting ''witness. He also states that two other witnesses Gaya Prasad and Bal Krishna were present although they did not sign as attesting witnesses. These two witnesses are produced. Gaya Prasad states that he was Dewan of the estate and Bal Krishna stated that he was the servant in the Singramau estate where the father-in-law of the talukadar lives in Jaunpur, and he also appears to be a cultivator. He appears to be a man of no weight. The evidence of these two witnesses Gaya Prasad and Bal Krishna is worth practically nothing as they were not attesting witnesses. The evidence of Har Prasad Singh given after so many years is also of very little weight. Now, this witness Har

Prasad Singh, does not state that the will was drawn up by Munshi Raj Keshore in whose house the talukadar was staying. This seems remarkable. We could understand a talukadar getting a will drawn up by a vakil, but we cannot understand a talukadar of Oudh coming to Jaunpur out-side Oudh province and proceeding to get a will drawn up affecting the whole of his talukadari estate merely by a person who was a clerk of a vakil. It would have been much more natural for the talukadar to consult his legal advisers in Oudh who were familiar with the law of Oudh. Again the difficulty arises that the provisions of the Oudh Estates Act of 1869 are well known in Oudh and in particular the provision that a will requires to be registered within one month of its execution is quite well known. This was the law in Oudh during the life-time of this talukadar as he died in 1905 and the law was not altered until the Amending Act of 1910. We think there, fore that if he had desired to execute the will he would have complied with this well known provision and he would have had his will drawn up by competent legal advisers who lived in his own province of Oudh and were familiar with the law of Oudh. On the other hand, if any one put forward a forged will after his death, which is in favour of the applicant, the putting forward of that will would naturally be done in Jaunpur where the family home of the applicant is. The property in Oudh was valued even according to the application at several lakhs and the property in Jaunpur is only valued at Rs. 15 odd, as is stated on p. 55 of the report of the Collector. It is quite inconceivable that any normal talukadar would have adopted the course attributed to the testator in the present instance.

11. Two other points may be mentioned. Firstly, the talukadar died at an early age of between 35 and 36. It is not likely that a man of such an early age would make a will, and to explain this difficulty, para. 3 of the alleged will sets out a story that when he was a student at Fyzabad an astrologer predicted that his 35th and 36th year would be unlucky and dangerous and that that was the reason why he made the will. This paragraph appears to have been inserted by someone who forged the will. Another point against the genuineness of the will is that the daughter was born a few months after the death of her father in August 1905, and when it was found by her birth that the child was not a male child, then naturally persons concerned with her interests would have thought it necessary to invent the will. Much stress has been laid in argument on the point that Thakurain Dharam Raj Kunwar is the person who is stated to take the estate under the will, and it is suggested that if her name were introduced, then such a will could not have been fabricated in the interest of the applicant. Be that as it may, it is a fact that Thakurain Dharam Raj Kunwar never made any claim under this will although she is still alive and although the will was registered in 1920. Whether she was a party to any conspiracy in the matter or not, of course, is difficult to say, but the introduction of her name does not form a strong point in favour of the genuineness of the will because she has never claimed to act under the will.

12. Another ground which we may note would require interference of this Court in revision even if the will were held to be genuine and that is that the letters of administration of the District Judge are absolute and he does not limit the letters of administration to the province of Agra. He has considered that he had jurisdiction to grant letters of administration also for the province of Oudh and he adopted this view as he considered that the word "province" was defined by the General Clauses Act which associates that word with one Government. In Section 273 it is stated that letters of administration shall have effect throughout the province in which the letters of administration are granted. We consider that the word ''province" in this section must be taken from the definition in Section 2(g) of the same Act which says "province" includes any division of British India having a Court of the last resort. Within that definition the District Judge had only power to grant letters of administration which would be effective throughout the province of Agra which is under this High Court and the province of Oudh, which is under the Chief Court of Oudh, is separate from the province of Agra within the meaning of this definition, and the District Judge was wrong in purporting to grant letters of administration which would be also valid for the province of Oudh. For these reasons we consider that it has not been proved that the will is a genuine will and accordingly we allow this appeal and we dismiss the application of the applicant for letters of administration with a copy of the will annexed, with costs against the applicant Srimati Ashtbhuja Ratan Kunwar in both Courts. Respondent 2, Lal Bhupendra Narain Singh, filed an application asking that the petitioner''s application should be rejected, and in this Court he has also filed an application of objection to the decree on various grounds. So therefore he is not liable for costs.