Sajid Ali and Wajid Ali Vs Ibad Ali

Court: Privy Council

Date of Decision: July 20, 1895

Citation: (1895) 22 IndApp 171

Hon'ble Judges: Watson, Morris, Richard Couch, JJ.

Judgement

Watson, J.

1. The late Chaudri Karim Baksh was owner of one-half share of the talook Pachgahni, in the district of Bara Banki, which was duly entered in

Lists 1 and 3 prepared under the Oudh Act I. of 1869, and was therefore descendible, in the event of his dying intestate, according to the rule of

primogeniture. He had three sons, the eldest, Ibad Ali, by his first wife, being the Respondent, and the younger sons, Sajid Ali and Wajid Ali, by

his second wife, being the Appellants in the original and only appeal which has been insisted in at their Lordships" bar.

2. The deceased had a paralytic attack about the year 1879, by which he was affected until his death, which occurred on the 16th of October,

1883. In the year 1882 the deceased became dissatisfied with the conduct of the Respondent Ibad Ali, to whom he had previously entrusted, for a

period of twenty years, the entire management of his property. On the 24th of March, 1882, he executed a will by which he settled his estates

upon his three sons in equal shares; and on the 27th of May, 1882, he applied for mutation of names in their favour. That application was resisted

by the Respondent, on the ground that his father had become unable to manage his own affairs, and was ""a perfect insane."" It was ultimately

withdrawn, in consequence of the deceased having executed a second will on the 25th of September, 1882, by which he appointed his two

younger sons to succeed him as talookdars, having the sole management and administration, and restricted the interest of the Respondent to one-

third of the free profits during his lifetime.

3. From the time when the Respondent was deprived of the management he appears to have lived on terms of open enmity with his father until the

death of the latter. After the execution of his second will the deceased, on the 7th of November, 1882, obtained an order from the Assistant

Commissioner, which was subsequently confirmed by the Commissioner on an appeal by the Respondent, to the effect that the possession of the

deceased was to be maintained until removed by a court of competent jurisdiction. All the parties, including the Respondent, were, by the same

order, bound over to keep the peace. The Respondent, notwithstanding, forcibly interfered with his father''s estate and its management; and or the

23rd of December, 1882, upon a complaint at the instance of the deceased, which was supported by the testimony of the deceased given in open

Court, he was convicted of breach of the peace, and sentenced to pay a fine of Rs. 200. In April and May, 1883, similar proceedings were taken

against the Respondent, when the deceased again appeared in court, on the 5th of May, 1883, and gave his deposition upon oath.

4. On the 29th of June, 1883, the Respondent presented a petition to the Deputy Commissioner of Bara Banki, praying him to place the estate of

the deceased under the management of the Court of Wards. The reasons assigned for the application were, that the deceased was a man of

seventy, that he had been paralysed for three or four years, and that he had ""consequently become weak and imbecile, quite unable to manage the

affairs of the estate. He has no discretion of either good or bad, and has lost his powers of moving and seeing, and is a perfect insane."" The

Deputy-Commissioner made a remit to his Assistant for inquiry into the condition of the deceased. The Extra Assistant-Commissioner summoned

Karim Baksh before him, and, after an examination on various matters connected with the estate and family of the deceased, he reported, on the

30th of August, 1883: ""Chaudri Karim Baksh certainly had an attack of paralysis, and in consequence thereof he has lost strength of his leg to

some extent, but he is not out of his senses, nor is he of unsound mind. He has answered the questions put to him very thoughtfully."" Upon

receiving that report the Deputy-Commissioner declined to entertain the Respondent''s petition.

5. Upon the 10th of July, 1883, ten days after the date of the Respondent''s application to have his estate placed under the guardianship of the

Court of Wards, the deceased executed a third will. By it he appointed that his second son, Sajid Ali, should succeed him as sole talookdar; that

his third son, Wajid All, should be entitled to a moiety of the profits remaining after payment of the Government revenue and other necessary

expenses; and that the Respondent Ibad Ali should get Rs. 80 per mensem as maintenance allowance from Sajid Ali, subject to certain conditions

which it is not material to notice. The instrument sets forth that the object of the testator was to prevent disputes arising after his death, and that

Ibad Ali, my eldest son, has by his refractoriness and wickedness caused such disturbances that all hopes formerly entertained have vanished.

6. The Appellant, Sajid Ali, having been admitted to possession of the estate, as talookdar appointed by the preceding will, the present suit was

brought by the Respondent, in the Court of the District Judge of Lucknow, on the 9th of April, 1887. His plaint makes no mention of the wills of

March and September, 1882, but it impeaches the validity of the will of the 10th of July, 1883, on three separate grounds, the first being that the

document was fraudulently obtained by the Appellants through undue influence and coercion; the second that, at the date when it bears to have

been executed, the deceased was of weak intellect, had lost his senses, and was unable to distinguish between right and wrong; and the third, that

it was contrary to Mahomedan law and to Act I. of 1869. The prayer of the plaint is that possession be given to the Respondent of the whole

immoveable, and also of certain moveable property of the deceased, of the estimated value of Rs. 2000, with mesne profits. In their written

statement the Appellants simply traversed the allegations and pleas contained in the plaint.

7. The case went to trial before the District Judge upon four issues, the first being: ""Is the will executed by Chaudri Karim Baksh void as having

been executed owing to undue influence and coercion on the part of Defendants, and owing to Karim Baksh being at the time not of bound

disposing mind?"" The learned Judge negatived the issue, and, in giving judgment for the Appellants, expressed an opinion that, inasmuch as at the

date of its institution more than three years had elapsed since the time when the Respondent became aware of the provisions of the will, the suit

was barred by Act XV. of 1877, Schedule II., Article 91.

8. On appeal, the Judicial Commissioner reversed the decision of the District Judge, and gave the Respondent a decree for the one-third share of

profits which had been bequeathed to him by the second will of the 25th of September, 1882, with mesne profits from the time of the testator''s

death. The learned Judicial Commissioner came to the conclusion that, on the 10th of July, 1883, the deceased was incapable of making a valid

testament.

9. Upon the hearing of this appeal the Appellants'' counsel were, in the opinion of their Lordships, well advised in not pressing the plea in bar of

action which was suggested for the first time by the District Judge. Article 91 of Schedule II. of the Limitation Act of 1877 does not appear to their

Lordships to have any application to the case of a will. On the other hand, the Respondent did not open or insist in his cross-appeal, which was

brought for the purpose of raising the question whether the deceased was precluded from disposing of his estate by will, in prejudice of his heir-at-

law, either by Mahomedan law, or by Act I. of 1869.

10. Both Courts below have concurred in finding, as matter of fact, that the testator was of sound disposing mind at the time when he executed his

first and second wills; and they also concurred in holding that the will of the 10th of July, 1883, was not procured by undue influence or coercion.

In these circumstances, the arguments of counsel were exclusively directed to the question whether the deceased Karim Baksh was or was not

possessed of sufficient testamentary capacity at the time when he executed his third will.

11. It is hardly necessary to observe that a permanent paralytic affection, whilst it must to some extent diminish the physical energy of the sufferer,

does not necessarily impair his mental powers to such an extent as to render him incapable of transacting business or of executing a will. Even in

cases where the mental faculties of the person affected have been greatly enfeebled by physical weakness, he may still be capable of devising and

intelligently executing a will of a simple character, although unfit to originate or to comprehend all the details of a complicated settlement. Nothing

can be more simple than the changes which were made by the will impeached upon the terms of the second will which it was intended to

supersede. In so far as concerns the Respondent, the alteration consisted in reducing his third of profits to a monthly allowance of Rs. 30. Upon

the assumption that the testator understood what he was doing, it cannot be said that the will of July, 1883, was either unnatural or unreasonable.

Besides violently interfering with the estate, the Respondent had been and was then persistently endeavouring to brand his father with the stamp of

insanity, with the view of depriving him of the management of the estate during his life, and of the power of regulating his succession after his death.

12. Their Lordships have already adverted to the fact, that, in the beginning of May, 1883, the deceased gave evidence in Court; and that towards

the end of August he was able to attend the Extra, Assistant-Commissioner, and to give intelligent replies to the questions addressed to him by that

official. It is obvious that, between these dates, the deceased must have suffered and must have recovered from a serious attack, if, as the

Respondent maintains, and the Judicial Commissioner has held, he was incapable of making a will on the 10th of July. But no such access of illness

and subsequent recovery during that period of three months and a half is spoken to by any of the witnesses on either side. On the contrary, most of

the Respondent''s witnesses who speak most strongly to the mental incapacity of the deceased, assert that it existed continuously from and after the

time of his first attack in 1879. But their evidence, when examined, comes to very little. They state that the deceased ""could not distinguish between

good and bad,"" and also that he was ""not in his full senses."" The only reason which they assign for his inability to distinguish between good and bad

was, that he was frequently in a passion, and used abusive, and, occasionally, obscene language. That the deceased was not in his ""full senses"" is in

one sense perfectly true. He was feeble in body; the vigour of his mind was impaired, and his utterance was defective; but there is nothing in the

testimony of the Respondent''s witnesses, taking it by itself, which could reasonably lead to the inference that he was incapable of understanding

such business as falls to the lot of a talookdar, or of regulating the succession to his property.

13. On the other hand, the evidence adduced in support of the will appears to their Lordships to negative conclusively any speculations which

might be founded upon the testimony brought forward by the Respondent. That the will was formally executed by the testator in presence of the

attesting witnesses is clearly proved, and was not disputed by the Respondent''s counsel. On the 10th of July, the day upon which it was executed,

the Sub-Registrar attended at his house for the purpose of registering the will; and, in the course of these proceedings, the deceased twice signed

his name, without assistance, in the presence of that official, who was examined as a witness for the Appellants. In his deposition he says: ""I saw

him sign. He was in full possession of his senses.... The deed was read and explained to him, and he said that he understood it. His hand did not

shake. No person held his hand while he signed."" The same witness added: ""Karim Baksh was the first to tell me that a will was to be registered. I

read out the deed, and gave an abstract of the contents."" Then the evidence of the Extra Assistant-Commissioner, to whom the Respondent''s

petition of the 19th of June was remitted for inquiry, shews that in August the deceased fully understood the terms of the will which he had made

and its effect. He summoned the deceased, who came to his office on the 23rd of August; and he says: ""I put questions to him in such a way as to

test his sanity; whatever questions were injurious to his interest he kept silence with reference to them, but answered all questions which were

beneficial to him."" As the report made at the time by this witness bears, the deceased, referring to the will of the 10th of July, informed him, ""But

now I altogether exclude Ibad Ali"" and then went on to explain, with perfect accuracy, the occurrences which had induced him to take that step.

14. Their Lordships think it proper to notice two statements made by the deceased in his deposition, before the Extra Assistant-Commissioner,

which were relied on in both Courts below, and to some extent before this Board also, as indicating that the deceased was the victim of insane

delusions. In complaining of the mismanagement of the Respondent, the deceased said, ""My daughter is dead, she had no trousers but one, she

used to wear her brother''s trousers."" He also said, "" During his incumbency as karinda (managing agent) he did not pay any debts, on the contrary

he incurred a further debt of Rs. 7000 or Rs. 8000."" Their Lordships must observe, in the first place, that neither in the plaint, nor in the pleadings

which followed, is there any mention of delusions; and, in the second place, that, in order to constitute an insane delusion, it must be shewn not only

that belief in it was unfounded, but that it was so destitute of foundation that no one except an insane person would have entertained it.

15. In the present case there is no reason whatever for supposing that the Respondent did not contract debt to the amount stated during his twenty

years" management of the estate. He knew the terms of his father"s statement before the proof commenced; and, although the onus was upon him

of shewing that the statement was due to insane delusion, he led no evidence to contradict it. The suggestion that the deceased laboured under

delusions with respect to his daughter"s garment appears to their Lordships to be no less absurd. His statement with regard to that article of dress

was said to be contradicted by the evidence of the Appellant Sajid Mi, who, in answer to a question by the Respondent"s pleader, stated: "" My

sister died in her husband"s house, she was married to a talookdar. ""When she died she was not wearing the pyjamas of one of her brothers.

How, the deceased, in his deposition, said nothing to contradict that statement. Their Lordships would naturally infer from his deposition that the

domestic incident, which is not shewn to have been impossible, occurred whilst his daughter was still" living in family with hire, and was probably

told to him, and not actually observed by him. At all events, the statement does not afford the least evidence of insane delusion.

16. Their Lordships do not think it necessary to refer in detail to the evidence of all the witnesses who were adduced in support of the will. But the

testimony of one witness, Dr. O"Brien, at one time Civil Surgeon at Bara Banki, is valuable, because he is the only European expert who saw the

deceased, and also because his character and skill were admitted by the Respondent"s counsel to be beyond question. He visited the deceased on

the 18th of June, 1883, three weeks before the date of the will, and on that occasion gave him two certificates. One of these was to the effect that

the deceased was ""suffering from paralysis, the result of an extravasation of blood in the brain. He is physically unfit for attendance at Courts, and,

in my opinion, should be exempted from such."" The other was to the effect that the deceased was "" in a sound state of mind, and is capable of

understanding the effect of any will, deed, or other legal instrument he may wish to execute."" In his deposition as a witness Dr. O"Brien affirmed

the accuracy of these documents. He explained that the deceased "" had recently suffered from an extravasation of blood in the brain,"" and that, in

his opinion, any excitement would be likely to occasion fresh haemorrhage. He adhered to his opinion that the deceased was mentally sound, and

quite capable of making a will.

17. Upon the whole evidence, their Lordships have had no difficulty in coming to the same conclusion with the District Judge, and in rejecting the

decision of the Judicial Commissioner. There is not only reliable oral testimony, but there are facts in the case established beyond controversy, all

tending to shew that the deceased continued in the same mental condition from the time of his first attack in 1879 until his second and fatal attack in

October, 1883.

18. Their Lordships have had some difficulty in apprehending, and are quite unable to concur in, the reasons assigned by the Judicial

Commissioner, for his decision. The learned Judge, after an examination of the evidence, cites passages from the treatise of Dr. Boss on Diseases

of the Nervous System, and Dr. Quain''s Dictionary of Medicine, and then proceeds to quote various dicta of English Judges in cases of insanity

and incapacity, which appear to their Lordships to have little or no bearing upon the facts of the present case. Under the influence apparently of

these medical and legal authorities, and relying on the fact spoken to by Dr. O''Brien, that there had been extravasation of blood in the brain, he

held that the deceased must, at the time when he made his third will, have had ""a fresh access of his terrible malady."" That speculative theory, for it

is nothing else, illustrates the danger of deriving inferences of fact from medical books and judicial dicta, instead of depending upon the facts

established by the evidence in the case. It does not seem to have occurred to the learned Judge that, assuming the deceased to have had a ""fresh

access"" before Dr. O''Brien saw him, which is neither probable nor proved, he must have recovered from it before the 18th of June; and that there

is not a particle of evidence to shew that there was any change in his condition, bodily or mental, between that date and the execution of the will.

19. Their Lordships will therefore humbly advise Her Majesty to dismiss the cross-appeal, and, in the original appeal, to reverse the decree of the

Judicial Commissioner, to restore the decree of the District Judge, and to order Ibad Ali to pay to Sajid Ali and Wajid Ali their costs of the appeal

to the Court of the Judicial Commissioner. Ibad Ali must pay to Sajid Ali and Wajid Ali their costs of these appeals.