

(1933) 07 CAL CK 0003

Calcutta High Court

Case No: None

Satish Chandra Sarkar
and Another

APPELLANT

Vs

Haridas Mitra

RESPONDENT

Date of Decision: July 19, 1933

Citation: AIR 1934 Cal 399

Hon'ble Judges: Mitter, J; Henderson, J

Bench: Full Bench

Judgement

Mitter, J.

This is an appeal from an order of the District Judge of Nadis granting letters of administration with the will annexed to the respondent Haridas Mitra. It appears that the case made by the propounder of the will is that a lady of the name of Thakamani Dasi died on 27th May 1929, and that some time before this she executed a will dated 24th October 1928 by which she bequeathed her estate to the respondent Haridas. The will recites that neither Thakamani nor her sister-in-law, that is, husband's brother's wife, one Tarangini, had any child born of their womb, and that consequently both she and her husband's brother's wife, Tarangini, took as their son Haridas, the present respondent, who is the youngest son of one Jogneswar Mitra of the village called Eruli. It is stated in this will that Jogneswar, the father of Haridas, was the son of the uncle of Tarangini, the husband's brother's wife of the testatrix, and that both of them brought up the respondent. It is stated further in this will that at the time of the will the said Tarangini particularly requested the testatrix that she should give all her properties, moveable and immoveable, to the respondent. It is further stated that the respondent lived as a member of the family of the testatrix and attracted her affection by his simplicity and good character and that he, Haridas, was particularly living as her adopted son. For these reasons the testatrix made a bequest in favour of Haridas in respect of her moveable and Immoveable properties with full rights of transfer by sale, gift and mortgage which Haridas was to enjoy in great felicity from generation to

generation. Then certain provisions are made for the family worship.

2. The will seems to us to be a natural will having regard to the circumstances under which the will was executed and having regard to the condition of the family of the testatrix at the time of the execution of the will. Within a few days of the death of the testatrix an application for letters of administration with the will annexed was made by the respondent in this appeal on 8th June 1929. This application was contested by two persons, one Satish Chandra Sarkar who was objector No. 1 and who is the sister's son's son of the testatrix and by objector No. 2 who is the sister's son's son-in-law. A question was raised with reference to the locus stand of both these objectors to contest the application for letters of administration, and the learned District Judge has come to the conclusion that both of them had no right to contest the present application as they are not in the line of heirs. The objector No. 2 has also set up a deed of gift executed 4 or 5 days before the death of the testatrix in his favour in respect of the Ranaghat house. This deed of gift is said to be registered. We are not really concerned in the present appeal with the question as to whether the deed of gift is or is not a valid one, for even if letters of administration are granted in respect of the properties mentioned in the will, this will operate on such properties as have not been disposed of by the testatrix before her death. The District Judge after taking oral evidence in the case has come to the conclusion that the will was duly executed by the testatrix and that she had full testamentary capacity at the time of the disposition of the will. He has accordingly granted letters of administration with the will annexed. Against this order the present appeal has been brought by the two objectors and the first question which arises for consideration is as to whether they have any right to contest the application for grant of letters of administration. We are of opinion that Satish Chandra Sarkar who claims to be the sister's son's son or sister's grandson of the testatrix is not an heir to the Stridhan property of Thakamani. In this connexion reference may be made to the law in this behalf with regard to succession to the Stridhan property of a woman under the Bengal School of Hindu law. Sir Gurudas Bannerjee in his Tagore Law Lectures on the Hindu law of marriage and Stridhan at p. 437, Edn. 3, states the law in this behalf as follows:

After the husband, the brother and the parents, the next group of heirs is that indicated in the following text of Brihaspati:

"The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no issue of their bodies, nor son (of a rival wife) nor daughter's son, nor son of those persons the sister's son and the rest shall take the property."

"But the Bengal lawyers"

as the learned author points out."

"while adopting this text as indicative of the group of heirs that comes next, do not, like Devandabhatta, accept it as declaratory of the order in which those heirs succeed one after another."

3. Then the learned author quotes certain passages from Jimutabahan, the author of the Dayabhaga. The learned author points out:

Raghunandan, Srikrishna and Jagannathe agree with the author of Dayabhaga in laying down the same order of succession for these six heirs ; and they refer to the same doctrine of spiritual benefit as the basis of their conclusion. On failure of these six heirs, the succession devolves on the father-in-law, the husband's elder brother, and the rest, according to their nearness of Sapinda kinship.

4. It has been sought to be contended on behalf of the appellant by Mr. Roy, that as the objector No. 1, Satish, is a blood relation of the testatrix it should be held that he is entitled to succeed before the Crown gets the property. It is impossible to accept this contention, for the Crown's right to come in accrues as soon as it is shown that there is no one in existence who comes in the line of heirs under the particular school of Hindu law by which the rights of the parties are governed. Indeed it would be dangerous to accept the contention raised on behalf of the appellant and would interfere with the right of the crown on failure of heirs which has already been crystallised in the decision of the highest authority: Collector of Masulipatam v. Cavaley (1859) 8 M I A 500, Sonet v. Himat (1875) 1 Cal 391. It appears clear, however, on these texts that Satish is not even in the line of the sapindas of the father of the testatrix. He offers no oblation to the father of Thakamani who is the same person as the father of Satish's father's mother Bhabatarini. It has been held in this Court that daughter's grandson is not an heir. It seems to us far less would the father's daughter's grandson be an heir under the Hindu law. We are therefore clearly of opinion that Satish is not an heir to the Stridhan property of Thakamani and has no right to contest the application. With regard to Aghore no question of heirship can possibly arise and in these circumstances he also has no right to contest the application. In this view it would have been sufficient to dismiss this appeal on this ground.

5. But as the learned District Judge has allowed these two persons to contest the application and has taken evidence in their presence we have to accede to the request of the appellant to look into the merits of the case, namely, as to whether the will was a duly executed will of the testatrix and whether letters of administration should be granted in respect thereto. The will, as has already been stated, is the very natural will under the circumstances. The execution of the will has been sought to be proved by a number of witnesses who all attested the will as also by parsons to whom the testatrix acknowledged the execution of the will. (After discussing the evidence his Lordship held that the will was duly executed and the judgment concluded.) Having regard to all these considerations we are of opinion that this appeal must fail and must be dismissed with costs. We assess the hearing

fee at five gold mohurs.

Henderson, J.

6. I agree. Mr. Roy laid great stress on the statements made in the deed of gift and the absence of any reference therein to the will and contended that the proper inference to draw would be that the will must have been created after the execution of the deed of gift. Whether the deed of gift is a valid document or not is a question which is not relevant to the present appeal. But if we assume in favour of the appellant Ho. 2 that the deed is a valid one I can see nothing inconsistent between it and the will. The case of the proponent is that the testatrix executed the will in his favour out of her affection for him. The case of the appellant No. 2 is that the testatrix conveyed one of her properties to him out of affection. It is therefore quite clear that there is a residue remaining to be dealt with, a residue which she did not wish to make over to the appellant. It is therefore quite clear that the question whether she had greater affection for the proponent or for the appellant No. 2 is a matter which throws no light at all on the genuineness of the will. Accepting the case of the appellants the question would be whether she would prefer the residue of her properties to go to the proponent rather than to appellant No. 2. Of this there can be no question on the evidence which was adduced at the trial. In fact appellant No. 2 is not an heir at all and the real question was whether the testatrix bequeathed her properties to the proponent rather than that they should escheat to the Crown. In these circumstances there was clearly nothing suspicious about the will and there is no reason why the deed of gift should have contained any reference to it. The case really depends on the credibility of the witnesses and I entirely agree with my learned brother that there is nothing in the case which would justify us in differing from the learned District Judge.