Privy Council No. 42 of 1923.

Oudh Appeal No. 1 of 1922.

Thakur Chandika Bakhsh Singh and another - - - *Appellants*

v.

Madho Singh - - - - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 29TH JULY, 1924.

Present at the Hearing:

LORD DUNEDIN.
LORD CARSON.
SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

The only question in this case is whether a certain will was really executed or not. This point is mooted for the first time twenty-five years after the will was executed, and that fact necessarily explains to a certain extent the paucity of evidence which is available as to the actual facts of execution. The will was witnessed by several persons; death has taken away all of them except two, but, as regards those two, they are both quite clear that the will really was executed; that it represented what the testator wished, and that he, although he might not have understood some of the flowery expressions, was yet perfectly competent to comprehend what, after all, were very simple provisions.

The will was produced at once; it was not kept quiet; it was produced within a very short time for the practical purpose of having mutation made of names in the register. The same thing happened when there was another change, owing to a death, and, again, the will was produced for the purpose of mutation of names.

In those circumstances, what really is said against the will? It is said, first of all, that it is of an unnatural character, because the eventual taker under the will is only a son-in-law. Their Lordships, however, are inclined to agree wth the view taken by the Appeal Court that, considering that the reversioner was a person far off, a person as to whose own particular identity there must have been some considerable amount of doubt, because the pedigree, at that time, had not been, so to say, cleared up, it was not unnatural that this man should wish that his son-in-law should succeed, and it was certainly most natural that he should make a will, because, according to the custom of the village, if he allowed himself to die intestate, his daughter, who was naturally the person whom he would have cared for most, would have been cut out altogether. It is also quite clear that not only his daughter, but also his widow, who under an intestacy would have been entitled to a life interest of the whole, both acquiesced in this will and in proceedings being taken for mutation under its provisions.

Then it is said that it is curious that this man did not have any of the villagers at the place that he lived in for witnesses. Their Lordships do not consider that that fact by itself is at all of sufficient weight to get over the circumstances which they have already mentioned. It really becomes rather a matter of speculation to settle who are most likely to be taken as witnesses. The fact of the will does not seem necessarily to depend on the exactitude of the story that is told by the defendant. The truth is that, if there were only the evidence of the defendant, it might be said that it was obviously interested. Their Lordships are therefore inclined to discard the evidence of the defendant as liable to be attacked upon the ground of interest, and because weight must be given to the fact that he certainly did, in the matter of the pedigree, seem to have shown himself a most unreliable person. But that does not affect the actual facts, which have been already stated.

The only other ground is that the will was not produced for probate, but those who are conversant with these matters say that that often is not done.

On the whole their Lordships do not see any reason why they should interfere with the judgment—which seems a very careful judgment—of the Court of Appeal, and they will humbly advise His Majesty to dismiss this appeal with costs.

In the Privy Council.

THAKUR GHANDIKA BAKHSH SINGH AND ANOTHER

v.

MADHO SINGH.

DELIVERED BY LORD DUNEDIN.

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