Privy Council Appeal No. 6 of 1927.

Oudh Appeals Nos. 2 and 3 of 1925.

Thakur Shiam Sundar Singh - - - - - - *Appellant*

v.

Thakur Jagannath Singh - - - - - - *Respondent*

Same - - - - - - - - - - *Appellant*

v.

Thakur Ran Bahadur Singh - - - - - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH OCTOBER, 1927.

Present at the Hearing:

LORD DARLING.
LORD WARRINGTON OF CLYFFE.
MR. JUSTICE DUFF.
SIR LANCELOT SANDERSON.

[*Delivered by* MR. JUSTICE DUFF.]

This is a consolidated appeal from two decrees, both of the 25th of November, 1924, of the Court of the Judicial Commissioner of Oudh at Lucknow, which were pronounced in an appeal from the Subordinate Judge of Partabgarh. The question raised by the appeal is whether certain legacies in a will of the late Drigbijai Singh, a taluqdar of Athgawan, in the District of Partabgarh, are valid, and the answer to this question must be governed by the determination of the issue, which was the real issue in the Courts below, whether or not the legatees entitled to the benefit of these legacies, if valid, signed the will as attesting witnesses. The Court of the Judicial Commissioner held, affirming the decision of the

Subordinate Judge, that this issue must be determined in favour of the respondents.

The testator, by his will, appointed his eldest son, Lal Bahadur Singh, as taluqdar after him, and gave to each of his three younger sons, Jagannath Singh, Ran Bahadur Singh, and Jang Bahadur Singh, certain villages out of the taluqa, to be held absolutely with heritable and transferable rights as under proprietors if and when they or any of them wished to separate from their eldest brother; but "so long as they live in union among themselves with the taluqdar," the taluqa was to remain undivided, and the income therefrom was to be "spent on the whole family," after paying government and village dues.

The testator also directed the division of his movable property in case of a separation, and by paragraph 8 he declared,

> "I have executed this will with the consent of all my sons and have got them to sign it as witness with this very purpose so that this will may be acted upon fully and they may not quarrel among themselves after my demise."

As to the genuineness of the will there is no dispute. Admittedly, also, disregarding the signatures of the testator's four sons, the execution of the will is attested by a sufficient number of attesting witnesses, in conformity with the law in force in the Province of Oudh.

As would appear from an inspection of the translation of the will, which is the plaintiff's exhibit 1, as reproduced in the record, it was signed by the testator as "executant," and below the testator's signature, after the signature of one of the witnesses, who, it is not disputed, was an attesting witness, there are the signatures of his four sons, and, below them, the signatures of three other persons who also admittedly signed as attesting witnesses. In the margin on the left of these signatures, and just above the signature of the first attesting witness, appears the word "Witnesses." The appellant, who is the son of the eldest son of the testator, on the strength of a passage in the judgment of the Subordinate Judge, contended that in the original will the word "Witness" appears opposite each of the signatures below the testator's, including those of the sons. As in their Lordships' opinion it is immaterial, for the purpose of deciding the question before them, whether or not this was the form of the original document, it may be assumed that the appellant's contention upon this point is well founded.

The will is dated the 17th of December, 1886, and the testator died in February, 1889. In May, 1889, the name of the eldest son, Lal Bahadur Singh, was, pursuant to the dispositions of the will, inserted in the Mutation Register, in place of that of the testator. The eldest son having died in May, 1912, a joint application was made in the following July by the appellant and his three uncles (including the two respondents) in the Tahsildar's Court for mutation of names and the substitution of the appellant's name for that of his father. Mutation was duly effected in conformity with this application.

Down to the death of Lal Bahadur Singh, his three younger brothers had lived in union with him, and after his death these three brothers, uncles of the appellant, continued to live with the appellant in joint family until the year 1914. In July of that year the youngest son of the testator decided to separate from the joint family, and an application by him to the Tahsildar's Court for the substitution in the Register of his name in lieu of that of the appellant, in respect of the villages bequeathed to him under the will, was not contested by the appellant, and accordingly was granted.

In June, 1921, the respondents having decided to separate from the joint family, applications were filed by them, requesting mutation of their names in respect of the villages to which they were severally entitled under the terms of the will. The appellant having raised the objection that the applicants ought first to establish their title by a decree of the Civil Court, the applications were dismissed ; and the respondents then, in May, 1922, instituted the suits out of which this appeal arises.

The Subordinate Judge held that the testimony of the three surviving sons of the testator as to the circumstances connected with the execution of the will must be accepted as credible testimony. The effect of this testimony, as the learned Judge states it, was that the testator, their father, had summoned his four sons to his presence, and, having explained that he had made a will leaving his property to them, asked them to attach their signatures to the will, not as attesting witnesses, but in token of their consent, with a view to avoiding disputes after his death ; and that they attached their signatures, pursuant to this request. The Subordinate Judge accordingly found, and with him the Appeal Court agreed, that the sons did not sign the will as attesting witnesses.

Before their Lordships' Board, counsel for the appellant admitted that the oral testimony narrating what occurred at the time of the execution of the will was admissible in point of law, and, indeed, as will be seen, upon it his substantive contention was founded ; nor did he argue that there was any ground upon which the appellant could ask for a reversal of the concurrent findings of the Indian Courts as to the credibility of that testimony. His contention was that, although the position of the signatures created only a presumption that they had been attached by the legatees as attesting witnesses, which presumption might be rebutted by parole evidence as to what actually occurred, still, since the signatures were by reason of their position *ex facie* signatures of attesting witnesses, that fact, when coupled with the fact disclosed by the oral evidence that they were placed there in compliance with the testator's request, was sufficient to constitute the attaching of the signatures an attestation in point of law ; and that consequently all questions of intention, whether of the testator, or of the persons who signed their names, were without relevancy.

As touching the effect of the evidence adduced on behalf of the respondents concerning what actually occurred at the execution

of the will, their Lordships have no hesitation in concurring in the view of all the Courts in India ; nor can there be, in their opinion, any doubt as to the character of the acts of the testator's sons in placing their signatures upon the document, when the terms of the will itself and the facts disclosed by that evidence are taken into account. The testator himself, by paragraph 8, which is quoted above, had declared his intention ; that paragraph, it is true, is not worded with the precision that might have been desired, but it would be a strange thing to give effect to it in such a way as to frustrate the obvious purpose of the testator in making it part of his will.

Its manifest object was to secure the co-operation of his sons in carrying out the dispositions of the will, and to do that by inserting in the will a formal declaration that his sons, by appending their signatures thereto, had concurred in those dispositions. By reading the clause as declaring that the sons had signed the will as attesting witnesses, one would ascribe to it a meaning according to which it would not only defeat the object of the clause itself, but nullify the distribution of his property which the testator was seeking to bring about in making his will. The more reasonable and natural reading would appear to be that the sons had attached their signatures as concurring in the declaration contained in this paragraph ; and this latter construction (under which this particular declaration would take effect, together with the will as a whole) seems to be enjoined upon the courts by sec. 71 of the Succession Act.

The issue as to the character of the acts of the respondents does not for its determination depend upon any conclusion touching the nature of an undisclosed purpose or intention. The witnesses agree that, while the testator invited others to sign as attesting witnesses, he addressed no such invitation to the sons, but asked them explicitly to sign for the special purpose of expressing their consent, with the view of avoiding dissensions in the future. The evidence, once it is accepted, shows that the act of each of them was, openly and palpably, with the knowledge of all present, the act of expressing consent, and nothing else. Their Lordships concur in the view of all the Courts below that in such circumstances the signers were not attesting witnesses within the meaning of sec. 54 of the Succession Act.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

THAKUR SHIAM SUNDAR SINGH

v.

THAKUR JAGANNATH SINGH.

SAME

v.

THAKUR RAN BAHADUR SINGH.

(*Consolidated Appeals.*)

DELIVERED BY MR. JUSTICE DUFF.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1927.