Privy Council Appeal No. 26 of 1944
Oudh Appeals Nos. 2 and 3 of 1941

Judah
v.
Isolyne Shrojbashini Bose and another

Judah
v.
Momin Zahidi and another

Consolidated Appeals

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST MARCH, 1945

Present at the Hearing:

LORD THANKERTON
LORD SIMONDS
LORD GODDARD
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD GODDARD]

The proceedings out of which this consolidated appeal arises concern the testamentary dispositions of Mrs. Manmohini Mitter, a widow formerly living at Lucknow. She died on 7th April, 1934, leaving three daughters her surviving, the appellant who was the youngest, the first respondent who was the second daughter and the second respondent the eldest. When their mother died each daughter produced a will which she claimed was the last true will of the deceased. Each daughter petitioned the Court of the Civil Judge at Lucknow for letters of administration with the respective wills produced by them annexed, and the three petitions were consolidated and tried as one suit. The will propounded by the appellant is dated 12 April, 1930; that propounded by the first respondent is dated 8th September, 1930 and the third will is dated 4th November, 1933. During the hearing of the case the two respondents came to terms; they each admitted the validity of the will propounded by the other. They agreed that letters of administration should be granted to the second respondent with the will propounded by her annexed, but that if the Court refused to admit that will then the will propounded by the first respondent was to be admitted and in either event they were to share the estate in the proportion of one-third to the first respondent and two-thirds to the second respondent. But that did not dispose of the will propounded by the appellant, as to which both respondents denied its due execution. In addition the first respondent alleged that at the date of execution the testatrix was not of sound disposing mind, though the second respondent did not challenge her capacity.

In support of her case the appellant called the three attesting witnesses of the will of 12 April, 1930. She herself did not give evidence, and this was made the subject of comment by the Chief Court. It is not clear to their Lordships what relevant evidence she could have given, either as to the execution of the will or as to her mother's state of health on the material day, as there was no suggestion that she was at the house or even

in Lucknow about the time, either before or after, that the will was executed. Of the three witnesses to the will one was a professor at the Lucknow Christian College, another a medical man who had been some 20 years in practise and was on the staff of a Medical College at Lucknow and the third a clerk in the employment of a business house. The will was actually written out for the deceased by the professor who subscribed as the first witness. It is to be observed that all three witnesses had been sent for by the deceased herself and were entirely disinterested. They were all in agreement as to the due execution of the will and that the testatrix was clear in her mind and knew what she was doing. She herself dictated the will to the Revd. Mr. Sicar. That she was unwell at the time is admitted. She told the doctor that she had had a vomiting fit that day, and also that in the previous year she had an attack of paralysis and the vomiting caused her to fear another attack, which would be a very good reason for her wanting to make a will. The doctor however was quite satisfied that she was fully conscious and aware of what she was doing. These witnesses were really not challenged in cross-examination, nor was any evidence called to contradict them, except that at a late stage the second respondent was allowed to give evidence in rebuttal. She was called apparently because she holds some sort of medical degree to testify to the effect of an attack of apoplexy on the mental condition of the person attacked. Her evidence was entirely worthless and indeed inadmissible. It was based entirely on hearsay; she had not seen her mother at or about the material time nor was there any evidence that the deceased ever had an apoplectic seizure, nor can their Lordships think of any more unsatisfactory evidence than that of an interested party called as an expert. In a careful and full judgment the Judge of the Civil Court accepted the evidence of the three attesting witnesses whom he had seen, and it is indeed difficult to see how he could have done otherwise considering that, as already stated, it was uncontradicted. He therefore pronounced for the will propounded by the appellant. With regard to the wills propounded by the respondents, either of which if valid would of course have the effect of revoking the earlier one, he held that they were not duly executed and in addition that the will propounded by the second respondent was obtained by coercion and was not the will of the testatrix. Accordingly he granted letters of administration with the will of the 12th April, 1930, annexed to the appellant.

The respondents then appealed to the Chief Court of Oudh. That Court affirmed the judgment of the Civil Judge so far as he found against the two later wills, but allowed the appeal against his finding in favour of the will propounded by the appellant. It is against this latter finding that this appeal is brought. The respondents have not appealed. The learned Judges of the Chief Court found themselves unable to believe the evidence of the three attesting witnesses as to the state of mind of the testatrix. Their only reasons for this were the contents of a letter written by the appellant's daughter and of two telegrams both signed " Grace " which they assumed were sent by a Mrs. Grace Paul, a professional nurse, though there was no evidence whatever that she had sent them and in the witness box she denied all knowledge of them. Dealing first with the letter which was written to the appellant, it is undated and the girl in her evidence said she wrote it not in 1930 but in 1929. Both Courts however thought from internal evidence in the letter that she was mistaken about this and that the letter was in fact written in April, 1930, and within quite a short time of the execution of the will, and their Lordships assume that this finding is correct. The girl was staying with her grandmother and evidently resented having to nurse her and do all the housework in addition. She wanted to be relieved of this and go home, so very naturally drew a somewhat gloomy picture of the conditions with which she had to cope, but was careful to say that the patient was not so ill that she could not leave her. The letter is no evidence of the facts therein stated. The girl herself gave evidence and the only legitimate use to which the letter could be put would be to use it in cross-examination for the purpose of discrediting her if what she had written was inconsistent with her evidence. But in any case there is in their Lordships' opinion nothing in the letter which shows

or suggests that the testatrix was incapable of making a will in April, 1930, nor if there was could the opinion of a girl of 17 be accepted against the evidence of a doctor who was quite disinterested and who was supported by two equally disinterested and respectable witnesses. With regard to the two telegrams it would be enough to say that their Lordships do not understand how they came to be admitted as evidence. They were not produced by the addressee but by the second respondent who gave no evidence as to how she came by them. It was never proved who the sender was, and Mrs. Paul who it was suggested had despatched them denied she had done so. Then again the contents of the telegrams are not evidence of the facts stated in them, nor is there anything in them to show that the testatrix was incapable of making a will. It was all along common ground that she was unwell when she executed the will but that is a long way from saying that she had no testamentary capacity. Their Lordships are unable to find that the Chief Court had any sufficient ground for differing from the conclusion of the learned Civil Judge who saw and believed the attesting witnesses, and with whose judgment their Lordships think it right to say they entirely agree.

The result is that the appeal should be allowed; the decrees of the Chief Court should be set aside and the decree of the Civil Judge restored. Under that decree the appellant gets her costs in the Civil Court, and the respondents must pay the costs of the appeals to the Chief Court and of this appeal. They will humbly advise His Majesty accordingly.

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DELIVERED BY LORD GODDARD

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