

Ishwardeo Narain Singh vs Sm. Kamta Devi And Ors. on 25 February, 1953

Equivalent citations: AIR1954SC280, 1953(1)BLJR690, AIR 1954 SUPREME COURT 280

JUDGMENT

S.R. Das, J.

1. One Jagdishwar Prasad Singh who was the son of Sripat Narain Singh by his first wife died on the 18th August 1934 leaving a minor daughter Srimati Kamta Devi. His wife had predeceased him but Jagdishwar Prasad Singh did not marry a second wife. It is alleged that Jagdishwar Prasad Singh had on the 18th December 1930 made his last will and testament. This will purports to have been attested by two witnesses, namely, one Sahdeo Singh, an Advocate practising at Ghazipur, and one Rameshwar Lal, since deceased, who was an Honorary Magistrate of Ghazipur. By this will the testator appointed one of his step-brothers, namely Ishwardeo Narain Singh, as the executor. By the will he directed that the entire fixed rate tenancy in village Billahri should be sold and the sale proceeds utilised towards the expenses relating to the marriage of his daughter and that until the property was sold the income thereof should be accumulated and should be utilised towards the expenses relating to the maintenance and marriage of the daughter. He further directed that after his death a grove should be planted in certain lands situate in village Kundesar and a temple should be constructed in the grove and an idol of Sri Thakurji should be installed therein and all the Zamindari rights together with the grove and the 'katcha' properties and the Zamindari share in certain villages mentioned therein should be dedicated to Thakurji and the income therefrom should be utilised towards the expenses relating to the Rag, Bhog, Puja and construction and repairs of the Thakur Bari, etc. He appointed his stepbrother Ishwardeo Narain Singh as the trustee and manager of the Thakur Bari and the property dedicated to Thakurji.

On the 29th October 1934 Ishwardeo Narain Singh presented a petition to the District Judge, Ghazipur, for the grant of probate to him. At the foot of that petition, Rameshwar Lal, one of the attesting witnesses, declared that he was present and saw the testator affix his signature thereto. The estate was valued at Rs. 3,000. An objection was put in on behalf of Srimati Kamta Devi, the daughter of the testator. At the trial, amongst others, evidence was given by the attesting witness Sahdeo Singh as to the due execution of the will and the testamentary capacity of the testator. The other attesting witness Rameshwar Lal was also called as a witness. After examination-in-chief his cross-examination began but before the cross-examination was complete that witness died and consequently his evidence could not be used as evidence in the case. The trial Court was satisfied that the will had been duly executed and that the testator had a sound disposing mind. He, however, found that the disposition contained in the will in favour of Thakurji was void for uncertainty and relying on a decision in - 'Phundan Lal v. Arya Prithi Nidhi Sabha', 33 All 793 (A), the learned

District Judge held that the will was not expressive of any definite intention and was, therefore, not a will as defined in Section 2(h) of the Indian Succession Act. In view of this finding the learned District Judge rejected the application for probate.

An appeal was taken to the High Court. The High Court held that the due execution of the will had not been proved. The High Court also held the view that the will was void for uncertainty and on both of these grounds the High Court affirmed the judgment of the trial Court and dismissed the appeal. The petitioner applied to the High Court for leave to appeal to the Privy Council but such application was dismissed. The petitioner thereafter applied to the Privy Council and obtained special leave to appeal. The appeal has since then been transferred to this Court and has now come up for hearing.

2. The dismissal of the application for probate on the ground that the disposition in favour of Thakurji is void for uncertainty can on no principle be supported and indeed learned counsel appearing for the respondent has not sought to do so. The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate Court. It is surprising how this elementary principle of law was overlooked by both the Courts below. However, as learned counsel appearing for the respondents has not sought to support this ground nothing further need be said on that.

3. As regards the other ground, the trial Judge who had the attesting witness before him was satisfied that his evidence could not be brushed aside lightly and could be safely relied on as correct. The High Court, however, took the view that the due execution of the will had not been proved and that the evidence of the only attesting witness Sahdeo Singh could not be accepted in view of the surrounding circumstances. The first circumstance referred to was that the will was an unnatural will. The testator had no male issue and had only one minor daughter. His wife had predeceased him and he had not married a second wife. By his will he made provision for the marriage of his daughter out of certain specified part of his estate. The rest of his properties he gave to Thakurji. We see nothing unnatural or unofficious about this will.

4. The High Court has relied on the fact that the will was not registered or deposited with the District Registrar. There is nothing in law which requires the registration of a will and wills are in a majority of cases not registered at all. To draw any inference against the genuineness of the will on the ground of its non-registration appears to us to be wholly unwarranted.

5. The next point urged against the genuineness of the will was that the entire property was dedicated in favour of a private charity and the fact that since the execution of the will in 1930 and till his death in 1934 no attempt had been made by the testator to erect a temple or install a deity. In the first place it is not accurate to say that the entire property was dedicated in favour of charity, because provision was made for the marriage of his only daughter. Further, there may conceivably be diverse reasons which prevented the testator from building a temple during his lifetime.

6. Finally, the circumstance that Sahdeo Singh is an Advocate and a friend of Ishwardeo Narain Singh's elder brother who is also a lawyer has been referred to as a ground for rejecting his evidence. We are wholly unable to accept this line of reasoning. Sahdeo is a person who pays land revenue of over Rs. 4,000 per annum. He is a practising Advocate. He acted as Advocate for the testator in one or two appeals. The estate of the testator was a small one, valued at Rs. 3,000 only. It is impossible to hold that a respectable man of the position of Sahdeo Singh should collude with the stepbrothers of the testator in putting up a forged will in respect of such a small estate.

7. Comment has been made that the testator was not on good terms with his father and his stepbrothers. The will itself recites that there was at one time some disagreement between the testator and his father and stepbrothers but after the death of his stepmother the disputes were evidently composed. We have documentary evidence to show that the testator and his father filed a joint written statement in some suit. It is also in evidence that the testator signed an application for execution of a decree obtained by his father acting as the general agent of his father. It is also in evidence that although the testator had separated, he and his father and stepbrothers used to pay land revenue jointly. There is nothing improbable in the family disputes being settled. In these circumstances there is nothing improbable in the testator appointing one of his stepbrothers as the executor of his will. It is in evidence that these stepbrothers have married the minor daughter of the testator in quite a well to do family. Taking all the circumstances into consideration we are clearly of the opinion that the High Court was not justified in taking a different view as to the credibility of the witness Sahdeo Singh who was entirely believed by the District Judge who had seen him in the witness-box before him.

8. The result, therefore, is that this appeal must be allowed and we direct probate to issue to the petitioner. The petitioner will get costs throughout in all Courts and costs of this appeal.