SATRUPA KUNWAR (DEFENDANT) v. HULAS KUNWAR (PLAINTIFF).

P. C.
1902
November 19.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Will—Validity of Will—Will of Oudh Taluqdar not registered under Oudh Estates Act (I of 1869), section 13—Subsequent addendum executed and duly registered referring to and explaining will.

Where a will made by an Oudh taluqdar was executed on the 29th of April, 1881, but was not registered within one month of its execution under section 13 of the Oudh Estates Act (I of 1869), and on the 26th of April, 1883, an addendum was made to it, in which the will was referred to and explained, and the addendum was then duly executed as a will and registered on the same day, an objection that the original will had not been registered in accordance with section 13 of the Oudh Estates Act and was therefore invalid, was overruled, and the document was held to be effective as a testamentary instrument whether the addendum was regarded as a codicil or a will.

APPEAL from a judgment and decree (27th June, 1899) of the Judicial Commissioner of Oudh reversing a decree (30th November 1898) of the Subordinate Judge of Unao and decreeing the respondent's suit.

The plaintiff Rani Hulas Kunwar sued to recover from the defendant Rani Satrupa Kunwar the profits of two villages, Fatehpur-Chaurasi and Jamania Katehi, on the ground that she was entitled to them (1) by a grant made to her by her father Hardeo Bakhsh Singh, C.S.I., which grant was confirmed by her uncle Raja Tilak Singh, (2) and by a will executed on the 29th of April, 1881, and registered on the 26th of April, 1883.

The defence was that there was no valid grant by Raja Hardeo Bakhsh Singh which could be confirmed by Raja Tilak Singh, and that the will of Raja Tilak Singh was invalid for want of registration.

The latter ground of defence raised the only question material to this report, which was whether the will was invalid as not having been properly registered under section 13 of the Oudh Estates Act (I of 1869).

On this point the Subordinate Judge found that the will was invalid, not having been properly registered under the provisions of that Act.

From his decision the plaintiff appealed.

Present :—Lord MACNAGHTEN, Lord LINDLEY, SIR ANDREW SCOBLE, SIR ARTHUR WILSON, and SIR JOHN BONSER.

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The facts relating to the execution and registration of the will are fully stated in the judgment of the Court of the Judicial Commissioner now appealed from which was as follows :—

"In appeal the learned counsel for the appellant rests his case entirely on the will of Raja Tilak Singh. The will, dated 29th April, 1881, contains the following passage :—

'Maintenance of the daughter of Raja Hardeo Bakhsh, my deceased brother, and of the male issue of the said daughter. First, that the entire profits of the villages Fatehpur-Chanrasi and Jamania Katch, Ilaka tahsil, Safipur, district Unao, should be made over to the daughter of Raja Hardeo Bakhsh, my deceased brother, generation after generation, so that after the said daughter (it should be given) to her male children in every season. But the said daughter and her male children shall not have power over the said profits of mortgage, hypothecation or sale. Nor shall they have power, on account of their right to the profits, to take possession of the aforesaid villages. Nor shall any other person obtain the attachment, sale or other transfer of the profits in lieu of his demand against them. By profits is meant the profits which remain after deducting Government demand and village expenses out of the *nikasi* in every year.'

"On 26th April, 1883, Raja Tilak Singh added the following words to the will :—

'I have received back from the Treasury for registration the will which I executed on 29th April, 1881, and which I delivered to Mr. John Quin, Deputy Commissioner of Hardoi, who, after my verification, deposited it in the Treasury. I promise to have the document formally registered as it now stands. The following details should be taken as forming part of this will. The words "Rani Sahiba" mentioned in the will mean Musammat Mahtab Koer (daughter of Daryai Singh), my wife. The words "immovable property" mentioned in the will mean the property situate in the districts of Hardoi, Unao, and Farrukhabad. The residence of Kunwar Kalka Singh is Dharampur, pargana Katyari. Thakur Chain Singh's father's name is Nishan Singh and his residence is Khair-ud-dinpur, hamlet of Baidijore. Dewan Kalka Singh's father's name is Lala Kunwar Sen and his residence is Purwa Sheo Charan, hamlet of Chanda Mohammadpur, pargana Katyari. Lala Jwala Pershad's father's name is Chaturbhuj and his residence is Fatehgarh, district Farrukhabad. All the provisions of this will shall come into effect after my death. Therefore I have executed this will, so that it may serve as a *sanad*. Dated 26th April, 1883, at Hardoi.'

"This addendum was dated and signed by Raja Tilak Singh. His signature was attested by further witnesses and the document was registered on the same date. The plaintiff summoned the original document from the defendant, who admitted her inability to produce it.

"Section 13 of Act I of 1869 lays down that no taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, shall have power to give or bequeath his estate, or any portion thereof, or any interest therein, to certain persons therein specified, except by an instrument of gift or a will executed and attested not less than three months before the death of the donor or testator, in manner herein provided in the case of a gift or will, as the case may be, and registered within one month from the date of its execution.

"Under section 2 of the Act, 'will' means the legal declaration of the intentions of the testator with respect to his property affected by this Act which he desires to be carried into effect after his death. 'Codicil' means an instrument made in relation to a will, and explaining, altering or adding to its dispositions; it is considered as forming an additional part of the will.

"The learned counsel for the appellant has contended that the addendum of the 26th April, 1883, is either a codicil or a republication of the will. Inasmuch as the addendum explains the original will, it falls within the definition of codicil. By section 19 of Act I of 1869, sections 51 and 60 of the Indian Succession Act are made applicable to all wills and codicils made by any taluqdar or grantee, or by his heir or legatee, under the provisions of Act I of 1869, for the purpose of bequeathing to any person his estate, or any portion thereof, or any interest therein.

"Section 51 of Act X of 1865 is as follows:—'If a testator, in a will or codicil duly attested, refer to any other document then actually written as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.' The same rule is to be found in Williams' Law of Executors and Administrators, 9th edition, Vol. I, at page 86:—'If the testator, in a will or codicil or other testamentary paper duly executed, refers to an existing unattested will or other paper, the instrument so referred to becomes part of the will.' The learned counsel has also cited, *In the Goods of Harris* (1) where a subsequent

(1) (1870) L. R., 2 P. & D. 83.

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will was held to ratify and confirm and thereby to incorporate the terms of a previous will.

"On the question whether the addendum amounted to a re-publication of the original will, the learned counsel has cited section 60 of the Succession Act, which runs thus:—'No unprivileged will or codicil, nor any part thereof which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.' He has also referred to Williams' Law of Executors and Administrators, page 170, to the effect that 'it has long been settled law that the republication of a will is tantamount to the making of that will *de novo*; it brings down the will to the date of the re-publishing and makes it speak as it were *at that time*. In short, the will so republished is a new will.' Also a passage at page 164:—'As to republication by codicil, the cases on wills, made before the Wills Act, show that a codicil will amount to a republication of the will to which it refers, whether the codicil be or be not annexed to the will, or be or be not expressly confirmatory of it; for every codicil is, in construction of law, part of a man's will whether it be so described in such codicil or not; and as such furnishes conclusive evidence of the testator's considering his will as then existing.'

"The learned counsel for the respondent contends that the will was taken back from the Treasury merely for the purpose of being registered 'in its present state'. There are no additions and no alterations in the addendum, which accordingly cannot be considered to be a codicil. He contends that under section 13 of Act I of 1869 the will expired on the 26th May, 1881, not having been registered within one month from the date of its execution. He contends that only wills, the execution of which was imperfect, or wills which have been revoked, can be republished, and that the execution of this will having been perfected, the will died after the period of one month and became incapable of republication. He contends that the only course open to Raja Tilak Singh was to re-write the whole will afresh, and then to sign and attest the paper so re-written. No authorities were cited in support of this proposition. It seems

unnecessary in this case to discuss minutely whether the addendum of the 26th April, 1883, is in strictness a republication of the whole will or a codicil explaining the previous will. The addendum undoubtedly explains the dispositions in the will. It therefore falls within the definition of codicil, unless it is excluded on the ground that at the date of the addendum the will was no longer the 'legal' declaration of the testator.

"I do not think it is so excluded. A revoked will can be revived by a codicil showing an intention to revive the same.

"If the codicil is duly registered and fulfils the conditions of section 13, Act I of 1869, it would incorporate the terms of the will, even though the will were unregistered or even unattested, and give validity to its terms. Assuming, however, that the addendum is not strictly a codicil, there can be no doubt that it is a will. The addendum purports to be a will and it does in terms declare that all the provisions entered in the former will will take effect after the testator's death and that therefore 'this will' has been written as a *sanad*. That addendum having been signed and probably attested on the 26th April, 1883, and having been registered on the same date, is a valid will under section 13 of Act I of 1869 in which by virtue of the provisions of section 51 of Act X of 1865 the document of 29th April, 1881, is incorporated. Whether therefore the addendum be considered as a will or codicil, in either case the will of the 29th April 1881 is incorporated and forms part of the addendum and is legally enforceable."

The Court of the Judicial Commissioner therefore passed a decree in favour of the plaintiff.

The defendant appealed to His Majesty in Council.

Mr. *Haldane*, K.C., for the appellant contended that under section 13 of the Oudh Estates Act (I of 1869) the will was invalid because it was not properly registered within one month of its execution. The will was taken from the Treasury to be registered as a will of the original date. The addendum written at a later date made no addition to or alteration in it; and could not be considered as a codicil. Nor was it a republication of the will so as to make it a new will. Owing to the omission to carry out a provision of the law which would have retained

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its validity, the will had become invalid and of no effect. There could be no valid registration of it after one month from its execution. Act I of 1869, sections 19 and 20, and the Indian Succession Act (X of 1865), sections 51 and 60, were referred to.

Mr. *Cohen*, K.C. and Mr. *DeGruyther* for the respondents were not heard.

1902: *November* 19.—Their Lordships' judgment was delivered by Lord MACNAGHTEN.

Their Lordships are of opinion that the judgment of the Judicial Commissioner is right. Whether the document in question is regarded as a codicil or as a will, it is perfectly good as a testamentary instrument and it must have its legitimate effect.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be dismissed. The appellant will pay the respondent's costs of the appeal.

Appeal dismissed.

Solicitors for the appellant—Messrs. *Gordon, Dalbiac and Pugh.*

Solicitors for the respondent—Messrs. *T. L. Wilson & Co.*

J. V. W.

1902
August 18.

REVISIONAL CRIMINAL.

Before Mr. Justice Burkitt.

HARBANS RAI AND OTHERS (APPLICANTS). v. CHUNNI LAL AND RAM PRASAD (OPPOSITE PARTIES).*

Revision—Practice—Criminal Procedure Code, section 195*—Sanction to prosecute—Application for sanction refused by Magistrate—Independent application subsequently made to the Sessions Judge.*

Certain persons who had been discharged after a complaint against them of the offences of kidnapping and extortion, applied to the Magistrate who had discharged them for sanction to prosecute the complainants. This application was refused by the Magistrate. The applicants then, instead of appealing or applying in revision to the Sessions Judge against the order of the Magistrate, made a fresh and independent application to the Sessions Judge for sanction to prosecute the complainants. The Sessions Judge declined to entertain this application. On application under section 195 of the Code of

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*Criminal Revision No. 487 of 1902.