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July 28.

APPELLATE CIVIL.

Before Mr. Justice Richards and Mr Justice Karamat Husain.

JANKI (APPLICANT) v. KALLU MAL AND OTHERS (OBJECTORS)*

Act No. VII of 1889 *(Succession Certificate Act), section* 1, *clause (4), section* 7, *clause (3) – Certificate of succession – Grant of certificate opposed by party setting up a will – Procedure – Hindu law.*

The widow of a deceased Hindu applied for a certificate of succession under Act No. VII of 1889. In opposition to this application an alleged will of the deceased was set up, and it was proved that the deceased, being of sufficient testamentary capacity, had, shortly before his death caused a draft will to be prepared, that he had had the draft read to him twice and explained to him, that he made it over to a person appointed a trustee under the will telling him to have it faired out and brought to him for signature, but that he died before this was done without having expressed any intention, except in one small particular, of wishing to alter the draft so made. The court below found in favour of the will and dismissed the application for a certificate.

Held on appeal that, although the lower court ought not to have tried any question beyond that of the existence of the will, as the conclusion that the deceased had made a will in the terms alleged by the objectors was justified by the evidence, the application for a certificate was rightly dismissed.

THE facts of this case are as follows :—

On the death of one Shadi Ram, his widow Musammat Janki applied for a certificate of succession under Act No. VII of 1889. Her application was opposed by Kallu Mal and others, who filed objections setting up a will alleged to have been made by the deceased. The evidence in support of the will so set up is detailed in the judgment of the court. The lower Court (District Judge of Meerut) considered the evidence adduced in support of the will, and finding that the will was valid dismissed the application before it for a certificate. The applicant appealed to the High Court.

Dr. *Tej Bahadur Sapru*, for the appellant.

Pandit *Moti Lal Nehru*, for the respondent.

RICHARDS and KARAMAT HUSAIN, JJ.—This appeal arises out of an application by Musammat Janki for a certificate under Act No. VII of 1889. Musammat Janki is the widow of one Shadi Ram, and *primâ facie* she would be the person entitled to

* First Appeal No. 73 of 1907, from an order of L. Stuart, District Judge of Meerut, dated the 19th of April 1907.

a certificate under the Act. Her application however was opposed by Kallu Mal and others who filed objections setting up a will alleged to have been made by the deceased. A draft was produced which is a draft of a somewhat elaborate will. Lachman Sarup was produced on behalf of the objectors, and deposed that he had written out this draft (which we will hereafter refer to as ex. A.) at the dictation of the deceased. He says that he explained the contents of the will to him, that it took him two days to prepare the document, and that at the close of each day he read it to the deceased. A doctor named Ram Chandar was also produced and he corroborated Lachman Sarup and said that four or five days before his death the deceased handed him Ex. A, which, he said, was a draft of his will. The deceased told him that he had appointed him a trustee under his will and asked him to take the draft and have it copied out fair for his signature. The deceased died without ever having executed the will. He wrote a letter to the Bank at Meerut giving certain directions as to a sum of Rs. 2,000 which he had in deposit with the bank which directions were strictly in accordance with his will. In this letter he says that he is making a will. It also appears that after the draft had been prepared the deceased wrote to Lachman Sarup about leaving Rs. 200 for a girls' school. The deceased seemed to think that he had mentioned this matter before. Lachman Sarup in reply told him that if he had mentioned it to him, he, Lachman Sarup, had forgotten it but that it might be added in the proper place. In the court below the appellant's case was that the deceased was not in his proper senses for a long time before his death. The deceased died on the 12th of January 1906. We think that had the application been made to us in the first instance, we should hardly have decided the validity or invalidity of the will on a summary application for a certificate. The Court might have exercised the discretion given to it by section 7, clause (3) of the Act; or the application might have been postponed and the objectors called upon to institute within a limited time a suit to obtain probate of the alleged will. The court however had undoubted jurisdiction to try the question whether or not there was a will. If the deceased had made a will in the terms alleged, the applicant Musammat Janki was not entitled to a

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certificate. The court below having tried the question and heard all the evidence, we think that we would only be putting the parties to unnecessary expense and prolonged litigation if we were not now to decide in appeal the question already decided by the court below. We have no reason to think that further evidence could be produced on either side and we think that the court below was quite justified in believing the evidence adduced by the objectors as to the testamentary capacity of the deceased. The question remains whether or not he in fact made a will before he died. There cannot be the slightest doubt on the evidence that the deceased intended to make his will. We believe the evidence of Lachman Sarup and Dr. Ram Chandar. The deceased, according to their evidence, had dictated his wishes with regard to this property. He had written about the girls' school and the bequest in favour of it of course must now be deemed part of his will. There is no evidence of any kind that he intended to make any other change in the disposition of his property. Dr. *Tej Bahadur* urges that the testator might, if he had an opportunity, have altered his mind. There is no doubt he might and in the same way a man can always revoke or alter his will. But there is no evidence whatever that the deceased was in a state of doubt as to his intentions. We think it cannot be argued that the mere fact that he had not executed the document itself prevented what Lachman Sarup had taken down at his dictation from being his will. According to Hindu Law it is not necessary that a will should be executed by the testator. Under all the circumstances of the case we think the conclusion at which the court below arrived, namely, that Shadi Ram had before his death made a will in the terms alleged by the objectors, was justified by the evidence. We accordingly dismiss the appeal but without costs, as we consider that the objectors ought to have taken some steps to prove the will at an earlier date.

Appeal dismissed.