

may be made under that section and yet be wrongly made, but it would nonetheless be appealable, and personally I am not prepared to adopt the view that once an appeal has been filed and admitted in this Court as an appeal against an order of remand under that provision and notice has gone, the respondent can improve his position by satisfying the Court that the order complained of is so bad or so unintelligible that it is impossible to bring it under any provision and, therefore, it is not appealable at all. I think that this is the substantial answer to what Mr. *Panna Lal* calls his preliminary objection. It is not a preliminary objection. The order was *prima facie* appealable as a remand order. It does not make it less appealable to say that the order is an indefensible one. Costs must abide the result of the suit.

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Appeal allowed.

PRIVY COUNCIL.

RAM GOPAL LAL (DEPENDANT) v. AIPNA KUNWAR (PLAINTIFF).
[On appeal from the High Court at Allahabad.]

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Will—Proof of execution—Evidence—Attesting witnesses.

Upon an issue whether the signature to a will is genuine or a forgery, the best evidence procurable of signature of the document by the testator should be furnished; an attempt to support the signature by anything which falls short of that standard, though it may not be fatal, is a serious defect. The absence of any of the attesting witnesses who are not called should be satisfactorily accounted for. Evidence to the effect that the signature appears to be genuine is of little worth in the absence of reliable evidence by witnesses present when the will was signed.

Judgment of the High Court reversed.

APPEAL (No. 55 of 1921) from a judgment and decree of the High Court (28th April, 1919,) reversing a decree of the District Judge of Azamgarh.

The present appeal arose out of an application made by the respondent for a grant of probate of a document, dated the 25th of January, 1915, purporting to be the will of her deceased husband, Bijai Singh. The appellant, a reversioner in the event of an intestacy, pleaded that the document had not been executed by the deceased but was a forgery.

*Present:—Lord BUCKMASTER, Lord ATKINSON, Lord SUMNER, Lord CARSON and Sir JOHN EDGE.

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The District Judge of Azamgarh who tried the case held that the alleged will was fabricated and the signature a forgery. That decision was reversed by the High Court on the facts.

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De Gruyther, K. C., and *Dube* for the appellant.

The respondent did not appear.

June, 30th.—The judgment of their Lordships was delivered by Lord BUCKMASTER.

On the 3rd of March, 1915, Babu Bijai Singh died, and on the 13th of September, 1915, his widow, who is the present respondent, applied, through Baj Bahadur Singh, as her attorney, for the grant of probate of a document, dated the 25th of January, 1915, which purported to be the last will of her deceased husband.

Objection was taken to the grant by the appellant, one of the male agnatic relations of the deceased and one of his reversioners in the event of intestacy, on the ground that the will put forward was never executed by the deceased but was a fabrication and a forgery. The learned District Judge before whom this issue was heard decided in favour of the appellant. His judgment was reversed by the High Court at Allahabad, exercising appellate jurisdiction, and hence the present appeal.

The respondent has not been represented before their Lordships, and they have consequently examined with especial care all the evidence in the case, and considered all the objections that could be taken to the appellant's argument, but they are of the opinion that the judgment of the High Court cannot be supported for reasons with which they will proceed to deal.

The deceased resided in the village of Nizamabad, in the district of Azamgarh. He was about seventy-four years of age at the time of his death, and had for some short time previously been in weak health and afflicted with paralysis. His male agnatic relations, who in the event of intestacy would inherit his property, subject to the widow's estate, lived with him in the same compound. He had no children, and his other relations were the four sons of his sister, one of whom was Baj Bahadur Singh, who had for some twenty-four years before the testator's death kept a druggist's shop at Lucknow. The earliest piece

of evidence bearing upon the present dispute is that of a man called Rameshar Prasad, who is head master of a school at Hardoi. He stated that at a date which the High Court fixed at the end of December, 1914, though the witness himself does not specify the exact time, he was informed orally by a man named Babu Manohar Lal, who was not called as a witness, that Babu Bijai Singh wanted to start a school to teach English, Hindi and mathematics, and asked witness to prepare a scheme. This he did, and sent it to the deceased, who appears to have acknowledged it, but nothing further took place. The bearing of this evidence upon the dispute is due to the fact that the document under consideration expresses a desire to establish such a school and makes provision for its expenses; but this amounts to no more than that a portion of the will complied with what appears to have been a former wish of the deceased, a wish which may well have been known to the people who put forward the document. There is no further evidence at all with regard to the matter until the date when the will was prepared and purports to have been executed. The drawing up of the document was undoubtedly done by one Ram Ratan Lal, and his evidence is that it was prepared on the 25th of January. It is stated, however, that it was executed on the following day—the 26th—and it purports to bear the signature of the deceased affixed in the presence of seven witnesses. It is a will of substantial length. It contains no reference whatever to the male agnatic relations of the deceased, but begins by a eulogy of his sister's sons. It then provides that a 12 anna share in mauza Khairauti, yielding Rs. 500 a year after payment of the Government Revenue, should be dedicated "for meeting the religious expenses incurred in connection with Bari Saughat situate at Nizamabad, Durbar of Sri Harmandirji situate in the city of Patna, and Bari Saughat Risham Katra situate in the city of Benares, and the temple at Nizamabad which has been built by my paternal grandmother." The next provision is for the expenses of a school where education is to be given in English, in the vernacular of the Province, and in the Gurmukhi, by dedicating to this object a mauza yielding a profit of Rs. 1,200 a year. It then declares that the rest of the property should

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remain in the possession of the widow, with a direction that she should keep any of the nephews—meaning no doubt, those already named—on whom she relies to look after her and the property—and give him one-fourth of the property for his services, the remaining property after her death to be divided equally among the other three nephews, and it concludes with a very specific and detailed account of fifteen items of property. Ram Ratan Lal alleges that no draft was ever made of this will, but that it was dictated to him by the deceased, at one interview beginning at four o'clock on the 25th of January, in the presence of Kali Charan and Jageshar, whose names appear as witnesses. There is no erasure or alteration of any kind from beginning to end of the whole document. This is in itself a remarkable fact—that a man stricken with illness, as the deceased was, should have been able to dictate in clear, logical, and even legal form, a complete and consecutive account of all his wishes, divided into separate paragraphs, including a specific enumeration of his whole estate, without one single error from beginning to end is a matter which arrests attention and provokes comment. The proceedings that follow show, in their Lordships' mind, quite clearly that that comment is only too well justified.

According to the respondent's case, there was no manner of concealment about the will. It was executed on the morning of the 26th of January, in the presence of many people, and attested by seven. It would, therefore, appear there was every reason why, upon the death of Babu Bijai Singh, the will would have been found and instantly put forward for probate; but no such proceeding took place. The first step that was taken was an application for the mutation of names with regard to the real estate made on behalf of the widow by Baj Bahadur Singh, who appears throughout as the representative of the widow and who, if the disputed document were genuine would doubtless be the selected nephew who took one-third of the estate. He asked on her behalf that the property should be changed from the name of the deceased to that of his widow who claimed by inheritance, and he signed the patwari's report, dated the 22nd of March, 1915, which stated that the nature of the transfer

was inheritance. To this objection was taken on behalf of the male agnatic relations, who alleged that there was an oral will, and upon this dispute witnesses were examined. The first witness, who was a grandson of the deceased, supported the widow's application, and said that Babu Bijai Singh died intestate, and that he would have expected to have known had a will been made. So also did another grandson named Hanuman Prasad. Ram Ratan Lal was not a witness, but he was aware of the mutation proceedings and made no reference to the will; and it was only on the 7th of May, when Baj Bahadur Singh was examined, that the will was, for the first time, mentioned. He then states in cross-examination that the deceased had made a written will, and bequeathed the whole of the property to his widow. His evidence as then given is as follows :—

“The Musammat has a right on account of her being the widow of the deceased. Babu Bijai Singh has also bequeathed the whole of his property to Musammat Aipna Kunwar under a will ('wasiat bhi kar daya hai'). I do not know if (this fact) is known to witnesses also. The will is a written one. It has not been produced. It is not here. It is with the Musammat. The will was executed in January last. It was executed at Nizamabad, at the house of Bijai Singh. I do not know exactly as to who were present there. I say everything from hearsay. I have been told this by the Musammat. I was not present (at the time of execution of the will). I have had a cursory view of the will. I do not know as to who the scribe is; nor do I know the names of the witnesses.”

If the will was, in fact, in existence at this date, and had been seen by Baj Bahadur Singh, it is certainly a most extraordinary fact that he never mentioned it until the hearing; and that then, having seen it (though, as he says, only cursorily), he asserted that it conveyed the whole of the property to the widow when in truth he was an important beneficiary under its terms.

The will was not produced in court, and the mutation proceedings ended by mutation being granted to the widow, on the ground of inheritance. An appeal was taken unsuccessfully to the Commissioner and the Board of Revenue, but still the will was not forthcoming.

On the 13th of September, 1915, the will is for the first time introduced to public notice, on the application then made by Baj Bahadur Singh on behalf of the widow for its admission to probate.

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Their Lordships pause here in the recital of the facts, for the purpose of pointing out what is required for proof of a will. A will is one of the most solemn documents known to the law. By it a dead man entrusts to the living the carrying out of his wishes, and as it is impossible that he can be called either to deny his signature or to explain the circumstances in which it was attached, it is essential that trustworthy and effective evidence should be given to establish compliance with the necessary forms of law. In the present instance, no formalities are essential. Proof of the testator's signature is all that is needed; but, in case of doubt or dispute, justice requires that the best evidence procurable of that signature should be furnished, and an attempt to support the signature by anything that falls short of this standard is a matter which, though it may not be fatal, is a serious defect. In the present case, as has been stated, seven witnesses purported to have attested the testator's signature. Their signatures as found on the document are these:—

Ram Kumar Singh; Bechu Singh; Ishar Singh, manager of Bari Sanghat, Benares; Sri Mahant Makund Singh Akali, manager of Sri Harmidar Takht, Patna; Jageshar, resident of Surahi; Maheshri Dat Patak, resident of Jamalpur; Kali Charan Lonja, resident of Surahi.

One of these—Ram Kumar Singh—is dead. Maheshri was not called: and, indeed, he filed a petition protesting that he had not attested. As he gave no evidence on oath, the statement in his petition cannot be considered, but his absence is serious. Of the three other witnesses, Bechu Singh, Jageshar and Kali Charan, no one was called, and no adequate explanation offered of their absence, although Ram Ratan Lal declared the will was actually prepared in the presence of the last two, who were consequently the most important witnesses to the alleged transaction, and one of them, Kali Charan, actually supported the application for probate with a statement that he was one of the attesting witnesses. The three witnesses placed before the court were Ram Ratan Lal, Baba Makund Singh, and Ishar or Parmeshar Singh, the servant of Baba Makund Singh. Ram Ratan Lal's statement has already been mentioned, and to it it is only necessary to add that, three or four days before the appeal from the Collector's order in the mutation case was to come

up for hearing, he wrote a letter in which he sought the good offices of Munshi Bihari Lal, who was one of the officials in the Board of Revenue, in favour of Baj Bahadur Singh, whom he described as his near friend and patron. The explanation that he gave of these letters is stated by the learned District Judge to be a gross absurdity, and with that criticism their Lordships agree. Although the learned District Judge who tried the case did not say in so many words that he disbelieved Ram Ratan Lal, his judgment can, of course, only have proceeded on the fact that he believed him to be lying, and their Lordships see no reason to differ with this conclusion.

The remaining evidence consists of the two witnesses that have been mentioned, and their introduction into the story is certainly remarkable. Nobody knew they were coming, and they had no reason whatever to give of their presence, except that Baba Makund Singh said he had been asked by a letter not produced and by a man since dead to go to the deceased who wished to consult him about a "waqf." This was twenty or twenty-five days before the 25th of January. They were due at Benares on the 25th of January, 1915, but they were occupied in court that day, and it was, therefore, impossible to put them forward for witnesses of a will executed on the 25th. They say that they attended on the morning of the 26th. They state that they arrived early; they waited in a room facing a verandah with other people and affixed their signatures. Baba Makund Singh says that some of the other people there present also affixed their signatures. Parmeshar Singh says no one affixed a signature in his presence except Baba Makund Singh; he adds, however, that Ram Ratan Lal read out the will, but this is not corroborated by Baba Makund Singh, who says the deceased read it, and makes no mention of its being read out by anybody.

The learned Judge who saw them said that he is quite satisfied that these men never were at Bijai Singh's house at all—in other words, he thinks they were telling untruths; and if their evidence is not to be trusted, there was no evidence at all before the court on which reliance could be placed to prove the execution of the will. Finally, Baj Bahadur Singh is called; and he gives evidence totally different from that given by him

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on the mutation proceedings. He asserts that the deceased told him all the conditions of the will; that shortly after the death, the widow showed him the will and he read it all through and saw the names of the witnesses, and took the will from her on the day of his examination in the mutation proceedings. His explanation is that the earlier evidence was wrongly transcribed by putting the widow's name in place of the deceased's as his informant. But comparison of the two statements shows that this explanation is useless as a reason for the discrepancy. This concludes the evidence for the respondent, and the District Judge rejected it. The High Court in differing from his judgment based their opinion, first, on the statement with regard to the proposed establishment of a scheme for a school; and, secondly, on the fact that the applicant widow who put forward the will was injured by its provisions.

Those considerations lead but a little way towards determining whether the signature was or was not the signature of the dead man; the point about the scheme has been already mentioned, while, so far as the widow's position is concerned, it should be remembered that the whole of the proceedings have been taken on her behalf by Baj Bahadur, who is a beneficiary under the alleged will, and she has never at any stage of any of the proceedings been personally introduced into the matter. Although Ram Ratan Lal is not regarded by the High Court as a person of character, and his statements are said by them not to be probable, they appear to accept the fact of his oath as to the execution in the face of the disbelief of the Judge who saw the witness. They regard Makund Singh's evidence as trustworthy, and think that the learned Judge disbelieved it on the ground that there was a personal motive involved. That may have influenced the learned Judge, but he was also influenced by the fact that in other proceedings Makund Singh had been guilty of falsehood, and by the inherent improbability of the whole of his story, which does not appear to have been sufficiently weighed and considered by the High Court.

The only remaining fact is--and this has caused their Lordships some uneasiness--that the learned Judges of the High Court, one of whom has a knowledge of native writing which

their Lordships do not possess, regard the signature as good, having compared it with the undoubted specimens of the testator's writing. The answer to this, however, is, that no forgery is of the least value, unless it closely resembles the real signature; and when witnesses are available to prove that a man actually made a signature, any evidence of a general nature to the effect that the signature appears to be genuine is of little worth in the absence of the material witnesses. Finally, their Lordships are greatly impressed with this fact—that no evidence whatever has been forthcoming to show when this document was found, where it was found, by whom it was found, or why it was that it was kept back until after the claim by the male agnatic relations was made, and the widow's evidence has never been taken nor any explanation offered of her absence. The history of a document such as this is of the most material importance for the purpose of determining its validity, and in the present case this history is a complete blank.

Their Lordships are of opinion that there has been no trustworthy evidence to establish the alleged signature of Babu Bijai Singh. There has been no adequate explanation of why the witnesses were not called who could have proved it, and they are forced to the conclusion that the document is not genuine and that this appeal should be allowed with costs and the judgment of the District Judge restored. They will humbly advise His Majesty accordingly. *Appeal allowed.*

Solicitor for appellant :—*Edward Dalgado.*

SARDAR SINGH AND OTHERS (PLAINTIFFS) v. KUNJ BIHARI LAL AND OTHERS (DEPENDANTS).

[On appeal from the High Court at Allahabad.]

*Hindu law—Hindu widow—Alienation of property of deceased husband—
Small fraction alienated—Spiritual benefit of husband.*

A Hindu widow in possession of the estate of her deceased husband made a gift by deed of immovable property forming about one-seventy-fifth of the whole estate for the observance of *bhuj* (fool offerings) to a deity, and for the maintenance of the priests. The gift, which was made in performance of a vow taken upon a pilgrimage to the temple, was stated by the deed to be for the salvation of the deceased husband, his family, and the widow. The

*Present :—Lord PHILLIMORE, Lord CARSON, Sir JOHN EDGE and Mr.

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