APPELLATE CIVIL.

Before Mr. Justice Sharfuddin and Mr. Justice Coxe.

DIN TARINI DEBI

v.

KRISHNA GOPAL BAGCHI.*

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Dec. 2, 3, 14.

Will, validity of—Construction of Will—Sambandha-nirnaya patra, whether can operate as a will.

A *sambandha-nirnaya patra* (matrimonial arrangement deed) attested by two or more witnesses devising property (in favour of a person marrying the daughter of the executant of the deed) to take effect after the death of the executant and his wife, if revocable, operates as a valid will of the executant.

Shumsool Hooda v. *Shewukram* (1), *Hurpurshad* v. *Sheo Dyal* (2), *Kalian Singh* v. *Sanwal Singh* (3), *Haidar Ali* v. *Tasadduk Rasul Khan* (4), *Balbhaddar Singh* v. *Sheonarain Singh* (5), *Sita Koer* v. *Deonath Sahay* (6) and *Ram Moni Dasi* v. *Ram Gopal Shaha* (7) referred to.

APPEAL by Din Tarini Debi, the objector No. 2.

This appeal arose out of an application for the grant of Letters of Administration with a copy of the will annexed alleged to have been executed by one Ram Chandra Talapatra in favour of one Krishna Gopal Bagchi, the applicant for the grant.

It appeared that the youngest daughter of Ram Chandra was married to the petitioner, Krishna Gopal Bagchi, who was then not in good circumstances. The document in question, *Sambandha-nirnaya patra*, was executed some days before the marriage and attested by three witnessess. The objectors alleged that the deed produced by the petitioner was not the genuine document executed by Ram Chandra; and they further urged that it was merely an agreement or marriage contract and, therefore, it could not operate as a will.

* Appeal from Original Decree, No. 443 of 1906, against the decree of S. N. Huda, District Judge of Pabna and Bogra, dated Sept. 6, 1906.

(1) (1874) L. R. 2 I. A. 7.

(2) (1876) L. R. 3 I. A. 259.

(3) (1884) I. L. R. 7 All. 163.

(4) (1890) I. L. R. 18 Calc. 1; L. R. 17 I. A. 82.

(5) (1899) L. R. 26 I. A. 194.

(6) (1904) 8 C. W. N. 614.

(7) (1908) 12 C. W. N. 942.

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The document was executed by Ram Chandra Talapatra on the 16th Sraban 1296 B.S., and ran as follows :—

"Salutation to Prajapati (Lord of the creation).

(Mark of Rupee in *Vermilion*).

"This auspicious deed of *Sambandha-nirnaya patra* (deed of matrimonial arrangement) is executed as follows :—I settle the auspicious marriage of my daughter, Srimati Trailokya Tarini Debi, with Sriman Krishna Gopal Deb-Sarma Bagchi . . . . . The condition laid down in that behalf is that the said Sriman Krishna Gopal shall permanently live in my family dwelling house at Patul, maintaining the ceremonies in honour of the Deities and my ancestors ; and on the demise of me and of my legally married wife, he shall be entitled to, and be in possession of, all the moveable and immoveable properties left by me. It shall now rest with me to make all rules for the ceremonies and I shall do all things . . . . . To this effect I execute this *patra* named the auspicious *Sambandha-nirnaya*."

(Attested by—)

"Harish Chandra Bhowmik
Panchanan Sarma Talapatra
Lakshmi Kantha Sarma Talapatra
} of Patul."

The above document was in the shape of a letter and addressed to one Ratanmoni Debi, an aunt of Krishna Gopal Bagchi.

The District Judge held that the document was a genuine one, and that as it was to take effect after the death of Ram Chandra and his wife, and as Ram Chandra had full power to alter or revoke it, the document was meant to be a will; and he accordingly granted Letters of Administration to the petitioner.

The objector No. 2 appealed to the High Court.

Babu Dwarka Nath Chakravarti (*Babu Rama Kanta Bhattacharjee* with him), for the appellant. The document, *sambandha-nirnaya patra* is not a will at all. It was marked with vermilion to shew that it was merely a marriage contract, and was never intended to be a will. The signatures on the document were forged to give it an appearance of a testamentary disposition. The writer of the document refused to sign it. A *sambandha-nirnaya patra* being merely a marriage contract, it can never operate as a will. A similar question was decided in the Privy

Council case of *Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry* (1). No testamentary disposition was intended by this document—both the name of the document and the occasion of its execution being opposed to such a supposition It is submitted that the document is not legally proved, and it not being a testamentary disposition, Letters of Administration should not be granted in this case.

Babu Golap Chandra Sarkar (*Babu Mohini Mohan Chuckerbutty* and *Babu Debendra Nath Bagchi* with him), for the respondents. If there be a disposition of property to be carried into effect after the donor's death, it is a will. It is not necessary that the legatee should take possession of the property immediately at the death of the testator. In this case the wife has a life estate, and after her death the son-in-law is to get it. The following cases were referred to :— *Ram Moni Dasi* v. *Ram Gopal Shaha* (2) *Shumsool Hooda* v. *Sheewukram* (3), *Hurpurshad* v. *Sheo Dyal* (4), *Haidar Ali* v. *Tasadduk Rasul Khan* (5), *Balbhaddar Singh* v. *Sheo Narain Singh* (6) ; and to Mayne's Hindu Law, 7th Edition, para. 429. The wording of the document is quite clear according to the provisions of the Succession Act. [SHARFUDDIN J. Could Ram Chandra alienate any portion of the property after the execution of the document, or revoke it ?] Yes, he could ; and he did actually alienate a portion of the same in his lifetime.

Babu Dwarka Nath Chakravarti, in reply.

Cur adv. vult.

SHARFUDDIN AND COXE JJ. This is an appeal against the order of the District Judge of Pabna, dated the 6th of September 1906, granting Letters of Administration with the will annexed to one Krishna Gopal Bagchi. The facts of the case

(1) (1865) 10 Moo. I. A. 279.
(2) (1908) 12 C. W, N. 942.
(3) (1874) L. R. 2 I. A. 7.
(4) (1876) L. R. 3 I. A. 259.
(5) (1890) I. L. R. 18 Calc. 1 ; L. R. 17 I. A. 82.
(6) (1899) I. L. R. 27 Calc. 344 ; L. R. 26 I. A. 194.

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are that one Ram Chandra Sarma Talapatra had four daughters and one son. The youngest daughter was named Srimati Trailokhatarini Devi. She was unmarried when a certain document, which is Exhibit I in this case, was executed by the deceased Ram Chandra Sarma Talapattra. His other three daughters had already been married at the time, and were living with their respective husbands. Ex. No. 1, which is propounded by the petitioner as the will of the deceased Ram Chandra, was executed in 1296 when the deceased was about 60 years of age. Exhibit I is styled in the document itself a *sambandha-nirnaya patra* and is in the form of a letter addressed to Ratanmoni Debi, an aunt of Krishna Gopal Deb Sarma Bagchi. The expression *sambandha-nirnaya patra* means a matrimonial arrangement deed. This letter informs the addressee that the writer has settled the marriage of his daughter with Krishna Gopal on condition that Krishna Gopal shall after the marriage live in the writer's family dwelling house at Patul, and that on the demise of the writer and his legally married wife, Krishna Gopal shall be entitled to, and be in possession of, all the moveable and immoveable properties left by him.

The above document appears to have been attested by three witnesses, namely, Hurish Chundra Bhowmik, Panchanan Sarma Talapatra, and Lakshmi Kantha Sarma Talapatra. The first two are said to be dead and the last has been examined as a witness for the petitioner. The objectors to the application are three, namely, Peary Mohan (son of the first daughter of Ram Chandra) Din Tarini Debi (his third daughter) and Debendra Narain Mozumdar (a son of the second daughter). It is admitted by the objectors that Ram Chandra executed a *sambandha-nirnaya patra*—a little before his youngest daughter's marriage; but it is said that the document propounded by the applicant is not the one that was so executed; and that even assuming the document to be genuine, it cannot operate as a will. It is only the objector No. 2, namely, Din Tarini Debi, who now appeals to this Court, and the grounds

taken before us are identically the same as were taken in her petition of objection, dated 20th of April, 1906.

Before dealing with the proper interpretation of the deed in question, we will dispose of the appellant's allegation that the document, Ex. I, is not the one that was executed by Ram Chandra before his youngest daughter's marriage. It is urged on behalf of the appellant that it is not customary for such a document to be attested by witnesses. This no doubt is true, but in this connection we must not lose sight of the fact that the intending bridegroom was a young man in poor circumstances, who expected to improve his pecuniary circumstances by his marriage with the daughter of an old man, who was in possession of some properties. Witnesses say that it was Krishna Gopal himself who desired that the document should be attested by witnesses. We think that Krishna Gopal's anxiety to secure attestation of witnesses was nothing but natural. That he should want to make his position pecuniarily better by securing a deed, which could be used to his own benefit, is consistent with his poor and straitened circumstances. He was in fact induced to marry Ram Chandra's youngest daughter by the hope of getting all the properties that Ram Chandra might leave after his death. It is urged on behalf of the appellant that no witness attested the document that was really executed by Ram Chandra, and that the document propounded is not the document that was executed, in other words it is alleged that this is a forged document and that two dead men's names have been forged as attesting witnesses. This document was executed in 1296, which corresponds to 1889 A. D. The application for Letters of Administration was made in 1906, that is to say, seventeen years after execution. Two of the witnesses are said to have died during this interval. It is evidently not at all improbable that two of them should die during this period. If this were a forged document, as is alleged, it would have been the easiest thing possible to secure its attestation by three living persons instead of forging the names of two men, who are said to have died, thus weakening the case by having only one wit-

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ness to attest the document. A forger always takes good care to remove all suspicions ; but here, if we accept the theory of forgery, we find the applicant relying on the slender testimony of one single witness. If we are to accept the evidence of Lolit Mohan Talapatra, witness No. 2 for the objector, we should have to find that the signature of Lakshmi Kantha Talapatra has also been forged. This witness on seeing the deed in question says.—"The signature in this deed is not that of Lakshmi Talapatra." But we find that Lakshmi Talapatra, witness No. 1 for the applicant, on seeing Exhibit No. I says "This bears my signature." If Lakshmi Kantha Talapatra is a creature of the applicant and has given false evidence in attesting as his own a signature which is not his, it is surprising that, if he was prepared to go so far, he should hesitate to put his signature on the deed and attest it as his own.

We find from the evidence of Lolit Mohan, witness No. 2 for the objector, that he is not prepared to swear that Ram Chandra's signature on the deed is not genuine. He says that he has seen Ram Chandra sign his own name, but he adds "It is difficult for me to say whether it is Ram Chandra's writing or not." Although at another place he says "I do not know whose signature it bears. It does not seem to me to be Ram Chandra's signature." The evasive manner in which he gave the above answers indicates the signature to be that of Ram Chandra's. Lakshmi Kantha Talapatra, witness No. 1 for the applicant, who is one of the attesting witnesses and also Harish Bhowmik, also an attesting witness, were present at the marriage assembly—(*vide* deposition of Shama Charan Roy, witness No. 1 for the objector). These two men must be either relations or friends of the parties contracting the marriage, and it is not at all surprising that they should also be present at the time of the execution of Exhibit I and being present it is very likely that they should have been asked by Krishna Gopal to attest the deed. According to the applicant's case, Exhibit I was written by Abhoya Gobinda Chuckerbutty, who has been examined by him and according to the objector's case the *patra* that was executed was written by

Denabundhoo Chuckerbutty, who has not been examined by the objector, as it is alleged that he is dead. It again appears from the evidence of Lolit Mohan Talapatra that at the time of the execution of the *sambandha-nirnaya patra* there were present Panchanan Talapatra, and Harish Bhowmik along with some other people. When the presence of these two men at the time of the execution of Exhibit I is admitted, there is no reason to suppose that they did not attest that document, when so asked. For the above reasons, we are of opinion that Exhibit I is the document that was executed as *sambandha-nirnaya patra* by Ram Chandra.

The next point urged is that, conceding Exhibit I to be the *patra* executed by the deceased, it cannot operate as a will.

The definition of the expression "Will," as given in the Probate and Administration Act (V of 1881) and the Indian Succession Act, X of 1865, is "the legal declarations of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death."

The important passage in Exhibit I, which corresponds with the above definition, is "and on the demise of me, and of my legally married wife he (Krishna Gopal) shall be entitled to, and be in possession of all the moveable and immoveable properties left by me." The above passage is a clear indication of the wishes of Ram Chandra with regard to such of his properties as may be left by him. It is contended on behalf of the applicant that Exhibit I is not in the form of a will, and that the form indicates that the document could not have been intended to be testamentary, and that the name of the document itself is against such a supposition. There is no doubt that the passage quoted above shows the testamentary wishes of the deceased. According to a very learned authority on Hindu Law, the form of the will is immaterial, Mayne on Hindu Law and Usage). Petitions addressed to officials or answers to official enquiries have been held to amount to wills: *Shumsool Hooda* v. *Shewukram* (1)

(1) (1874) L. R. 2 I. A. 7.

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Hurpurshad v. *Sheo Dyal* (1), *Kalian Singh* v. *Sanwal Singh* (2), *Haidar Ali* v. *Tasadduk Rasul Khan* (3), *Balbhaddar Singh* v. *Sheonarain Singh* (4).

No technical words are necessary for a will. The rule of construction in a Hindu as in an English will, is to try and find out the meaning of the testator, taking the whole of the document together, and to give effect to its meaning. In applying the above principle Courts of Justice in this country ought not to judge the language used by a Hindu, according to the artificial rules, which have been applied to the language of people, who live under a different system of law, and in a different state of society. In the case of *Ram Moni Dasi* v. *Ram Gopal Shaha* (5), it was held that a document, which contains directions regarding the executant's property after his death, which in certain circumstances may be revoked, is a will. A perusal of that case shows that the intentions of the testator in it were almost exactly the same as those of Ram Chandra in the present case. It was a case, in which the wishes of the testator were embodied in a document styled *niampatra* and *ekrar*. For the above reasons we hold that it is immaterial what the form of a document may be, but if it embodies the legal declarations of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death, it is a will. We find that in this case the testator's desires, with regard to his properties that may be left after his and his wife's death, are fully expressed in the passage in Ex. I quoted above.

It is important to note here that Exhibit I does not specify the properties bequeathed, it only says that Krishna Gopal will be entitled to anything that might be left after the death of Ram Chandra and his wife. Ram Chandra could have dealt with the properties that he had in any manner he might have liked notwithstanding the execution of Exhibit

(1) (1876) L. R. 3 I. A. 259.
(2) (1884) I. L. R. 7 All. 163.
(3) (1890) I. L. R. 18 Calc. 1; L. R. 17 I. A. 82.
(4) (1899) L. R. 26 I. A. 194.
(5) (1908 12 C. W. N. 942.

Queen-Empress v. *Mutasaddi Lal* (1), it was held that a person, against whom proceedings under Chapter VIII of the Code of Criminal Procedure are being taken, is an "accused person" within the meaning of section 437 of the Code. It appears from this case that the learned Judge, who tried it, followed *Queen-Empress* v. *Mona Puna* (2) and *Jhoja Singh* v. *Queen-Empress* (3).

If, therefore, the petitioner is an accused person, his case certainly comes under section 443 of the Criminal Procedure Code and, as a European British-born subject, is entitled to claim that he should be tried by a Justice of the Peace or a District Magistrate or Presidency Magistrate, provided the Justice of the Peace is a Magistrate of the first class and a European British-born subject.

In the above circumstances we make the Rule absolute, and direct that the District Magistrate do transfer the case to any Magistrate competent to try the petitioner.

Rule absolute.

E. H. M.

(1) (1898) I. L. R. 21 All 107. (2) (1892) I. L. R. 16 Bom. 661.
(3) (1896) I. L. R. 23 Calc. 493.