

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dowlat Koer v. Ramphul Das and others, from the High Court of Judicature at Fort William in Bengal; delivered 10th December 1897.

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The only question in this case is whether a certain paper writing purporting to be dated the 18th of May 1893 and to bear the signature of Narain Das who died on the following 3rd of June is his will or a forgery.

The instrument in dispute was propounded on the 9th of June 1893 by the Appellant Dowlat Koer who was living with Narain Das as his wife at the time of his death and had lived with him for about twenty years on that footing whether she was lawfully married to him or not. It was challenged at once by the three Respondents Babban Das a younger brother of Narain Das Uttim Koer his mother and Rajkali Koer his wife and his only living wife if Dowlat was not married to him.

After a trial which lasted fourteen days Mr. Brett the District Judge of Gya found for the will and decided in favour of the Appellant but refused her the costs of the suit on the ground that the will was not registered. On appeal to the High Court Mr. Brett's decision was reversed by Trevelyan and Ameer Ali J.J. They dismissed

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the Appellant's Petition with costs in both Courts.

In any view of the case there is much that is obscure and much that is unsatisfactory. But after carefully considering all the circumstances and giving due weight to the objections of the learned Judges of the High Court their Lordships have no hesitation in accepting the conclusion at which the District Judge arrived and pronouncing in favour of the will.

Narain Das seems to have been a little over fifty years of age when he died. He was a man of low caste—a Bari. At one time he was a table attendant of the Rani Asmed Koer. For some services to the Raja Run Bahadur who became her heir he was rewarded by valuable mokurruri grants and thus acquired a good deal of property. When in the service of the Rani he formed a connection with Dowlat Koer a maidservant in attendance on his mistress and then a young widow. Dowlat Koer says that Narain Das married her in privacy according to the simple rites of the "Sagai" ceremony. The Respondents represent her as merely a concubine discarded in favour of the lawful wife. The District Judge thought the weight of evidence was in support of Dowlat's contention. Their Lordships agree with him in this. It seems more probable that there was a marriage between Narain and Dowlat than that there was not. The point however is not very material. Nor is it material to enquire whether Narain's connection with Dowlat when it first began preceded or followed his marriage with Rajkali. There again if it were necessary to come to a conclusion their Lordships would be disposed to agree with the District Judge who does not seem to have fallen into the error attributed to him by the High Court of mistaking dates by confusing the younger Rani with the elder. Be that as it may it is quite

plain that Dowlat was not abandoned for Rajkali. For many years and down to Narain's death Dowlat was the favourite and her influence with him seems to have been paramount. He had no issue. Rajkali and Dowlat were both childless and so was his first wife who died before he married Rajkali.

Narain had two houses within the enclosure known as the fort of Tikari. They stood about 400 yards apart. One is spoken of as the north house, the other as the south house. The south house according to the District Judge who inspected both is in every way the larger the more convenient and the better built of the two. It was bought in Dowlat's name and rebuilt by Narain for her accommodation. "After he had made a fine place of it" says one of the witnesses for the Respondents "he put Dowlat into it." In this house Narain lived with Dowlat and her nephew Tunu who was Narain's treasurer or cashier and her brother Chhedi who used to be addressed by Narain as "Chhedi Bai" or "brother Chhedi." Narain's office was there. There he kept all his valuables his deeds his money and his jewels and there the customary nuzzars or complimentary offerings were presented in his honour. The north house was a humbler edifice and maintained on a poorer scale. It was occupied by Uttim and Rajkali and Babban and Babban's two wives. "In the north house" said Babban in cross-examination "we got no fixed monthly allowance from Narain; but I should say he sent us at the average Rs. 50 a month. His net income was say Rs. 20,000 a year."

It is common ground that Narain's illness lasted five or six months. Though he seems to have been confined to the house during the greater part of that period and though he was gradually getting worse it is not disputed that he

was perfectly competent to dispose of his property at the time when he is said to have made his will. In fact he did not become insensible until the last few days or as Babban says the last few hours before he died.

In these circumstances if it could be shown that Narain was minded to settle his affairs before his death or willing to face the question at all one would certainly expect to find provision made for Dowlat Koer and her relations. They seem to have held the first place in his affections. At any rate they were about him during his long illness. They must have foreseen the end. They were hardly likely to be indifferent to their own interests or to shrink from pressing their own claims and disparaging the merits or exaggerating the faults of absent rivals. On the other hand the inmates of the north house for all practical purposes were out of sight. What amount of intercourse there was between the north house and the dying man it is impossible to say. It is admitted that Uttim often came to see Narain during his last illness. Rajkali came but once if Dowlat and Tunu are to be believed. Dowlat speaks of one visit by Babban and Rajkali. She puts the date of that visit "soon after the deed to Tunu" which will be mentioned presently and which was dated the 28th of April 1893. "They remonstrated with Narain" says Dowlat "for alienating his property to my relations. "They spoke contemptuously of me. This led to the interchange of abuse and they left in anger." Tunu also says that Rajkali came once to complain and that Narain's reply was this:—"All the property is mine to deal with as I like." On this part of the case unfortunately no help is to be got from the other side. They pretended that Narain never ceased to live with the inmates of the north house. Uttim and Rajkali and Babban too in his examination in

chief say that Narain lived continuously at the north house that he fell ill there that about two months before he died they took him to the south house for change of air and migrated with him in a body. "We all stayed there" says Rajkali "till the death of Narain and then we said 'let us go and worship at the house where our family gods are'"—and so they all migrated back to the north house on the following morning. The District Judge who examined the ladies himself had no difficulty in rejecting this story as an impudent attempt to impose upon the Court. It is shown to be untrue by the ignorance which Uttim and Rajkali both displayed about the south house. "I do not believe" says Mr. Brett "they were there at all." It is disproved by entries in the accounts and by Babban's own admissions on cross-examination. It is directly contradicted by a petition signed and presented by Babban himself on the 28th of May asking for the intervention of the police to prevent Dowlat and her relatives despoiling the south house on Narain's approaching death. Narain Das it is stated in the petition "has been ill in his residential house for the last five or six months. Now he is becoming worse and there is no hope of his life; he may die to-day or to-morrow. Babu Narain Das has a kept woman who lives along with her brother and sister's son with the said Babu Saheb."

About six weeks before his death Narain made a partial disposition of his property. The evidence does not explain what led him to do so. But the fact is undisputed and not unimportant.

On the 21st of April 1893 he executed in favour of Chhedi a permanent and heritable mokurruri lease of a mouzah producing according to Babban a net annual profit of Rs. 600 a sum just equal to the annual allowance he was making for the north house. The lease was duly

registered on the 23rd by the sub-registrar who attended at the south house for the purpose.

On the 28th of April Narain executed in favour of Tunu a permanent and heritable mokurruri lease of a mouzah called Khurey producing according to Babban a net annual profit of Rs. 3,000. It was duly registered on the 30th. This lease as originally drawn and executed was in favour of Dowlat. It was intended to have the document in that form registered at the same time as the lease to Chhedhi. A petition stating its execution and asking the sub-registrar to attend for the purpose of registering it was presented on the 22nd together with a similar petition relating to Chhedhi's lease. But when the sub-registrar came he was asked to postpone the registration of the lease of Khurey on the ground that some alteration was required and the writer of the deed was not present. A petition was then put in stating that only one deed was ready and so only the lease to Chhedhi was registered on that occasion. So far there is no dispute. There is a conflict of evidence as to the reason for not completing the registration of the lease of Khurey as originally drawn. Babban says he was told "one afternoon" when he was in the north house "about six weeks before Narain's death" that one "Gur Sahai had come from Gya with a lease." "I went over" he adds "to see what was up. I saw my brother and Gur Sahai and Tunu and others. I asked Narain what he was doing. He said 'I am giving a life lease of Khurey to Dowlat.' She was on one side. He commenced to sign his name. He had got half through the signature when Gur Sahai said the deed was hereditary. Then Narain refused to sign and flung the paper down." Dowlat's account of the transaction is this:—"Narain was ill" she says "five or

" seven months. After he got ill he gave a
 " lease to my brother Chhedi and to Tunu my
 " sister's son. To Tunu he gave the lease of
 " Khurey. He had intended to give me the
 " lease, perpetual lease. This was written out,
 " but I refused. I said 'You give one village
 " ' to Chhedi and want to give one to me; what
 " ' is to become of the rest?' He said 'I will
 " ' give the rest to Tunu.' I said 'No give
 " ' Khurey to Tunu and give me the rest.' He
 " consented. The lease to me was destroyed
 " and Khurey was leased, perpetual lease, to
 " Tunu eight days afterwards." Babban's story
 cannot be true. It is extremely improbable; the
 lease to Chhedi and the lease to Dowlat were
 both prepared on Narain's written instructions;
 the lease given to Chhedi was hereditary; the
 lease given afterwards to Tunu was hereditary
 too. But apart from the improbability of
 the story it will be observed that there is
 no room for the incident described by Babban.
 It could not have happened on the 21st for the
 petition of the 22nd asking the sub-registrar to
 come over states that the lease was executed.
 It could not have happened on the 23rd.
 Babban says it was in the afternoon that he
 went over to see what was up. But the sub-
 registrar who is above all suspicion and who was
 called for the Respondents after stating that on
 the 22nd of April two petitions were put in to
 him to go to Tekari "to register two deeds
 executed by Narain Das" says "I went on
 " 23rd April arriving there very early; it was
 " the hot weather. I saw Narain. He had two
 " deeds. But he apparently wished to amend
 " one but could not find the writer." Dowlat's
 account may be true. To a certain extent she
 is corroborated by Babban himself. After stating
 that Khurey was afterwards given as a hereditary
 lease to Tunu he adds "This was on the advice

of Dowlat Koer." Whether Babban had any special reason for saying so or not the statement is a remarkable tribute to the influence which Dowlat had over Narain.

Putting aside the visit of Rajkali and Babban to complain of alienations of property in favour of Dowlat's relations (if the visit really took place) the evidence is a blank as to what occurred between the date of the gift to Tunu and the 18th of May the date of the alleged will. Dowlat Koer says that between the date she refused the lease and the date the will was given she had no talk about the will with her husband. She felt sure she says that he would do what he promised. Her reticence on the subject of the will during the period in question was naturally commented upon by the learned Counsel for the Respondents. It is certainly a matter for observation. But it does not go very far. It is possible that Dowlat's story may be true throughout. It is at least as possible that it may be true in the main though she may have deviated from the truth in her anxiety to make out that Narain was ready to fulfil his promise of his own free will and without any pressure from her.

The document put forward as Narain's will and the fulfilment of his promise to Dowlat is simple enough in its dispositive clauses. His entire property is left to Dowlat Koer absolutely subject to the payment to Uttim and Rajkali each of Rs. 25 a month.

The document purports to bear the signature of Narain Das and the signatures of twelve witnesses including the writer.

No one comes forward to say that Narain's alleged signature is not his own handwriting and yet his handwriting must have been well known to some of the persons who were witnesses for the Respondents. The District Judge notices

the point but observes that it may have been an accidental omission and says that he does not wish to lay too much stress upon it. The omission however acquires much greater significance from what took place in the Court of Appeal. One of the learned Judges in the High Court was familiar with the Native character and evidently not disposed to overlook the assistance to be derived in such a question as this from a comparison of handwriting. He scrutinized the signatures appended to the document in question. He saw or thought he saw some indication tending to show that the signatures had not all been written at the same time. He compared the signature of one witness with a signature which that witness subscribed to his deposition in Court and came to the conclusion that the two signatures were not made by the same person. But as to the signature of Narain Das he says nothing although he had actually before him in documents put in evidence signatures of Narain which were unquestionably genuine.

The alleged writer of the will was one Sheo Pershad a young mokhtar. It seems that in May 1893 there was a local investigation going on in regard to some litigation in connection with a village called Paluhan which was situated about two miles from Tikari. A number of lawyers and others concerned in the inquiry were gathered together at Tikari. Among them came Sheo Pershad and Sheo Sahai another young mokhtar. They put up in the same house at Tikari. They were old acquaintances they said of Narain. They heard he was ill and went to see him on the 12th. On the 16th he sent for them and consulted them about making over his property to Dowlat Koer. At first a deed was suggested, but the amount of the stamp duty seemed a formidable objection and so

after some discussion they advised a will. He told them how he wished to dispose of his property and they prepared a draft from his verbal instructions. It was their joint production. They left the draft with Narain that evening. On the evening of the 18th they were summoned again to Narain's house in order to complete the transaction. Sheo Pershad "faired out" the draft. Witnesses were collected and the will was duly executed. They both saw Narain execute it and they both attested his execution. That was their story. Of the other ten seven deposed to seeing Narain sign the will. They signed as witnesses and saw the other witnesses sign. That leaves three of the alleged witnesses to be accounted for. One was absent from illness. The remaining two were Kali Churn and Bankey Behari, a young pleader in the Gya Court whose name on the will appears in English with the word "witnessed" also in English before it. Kali Churn was summoned as a witness by the Petitioner. He evaded service and then was arrested. When he was brought into Court neither side would call him. He was called by the Judge. He said the writing of his name on the will resembled his but was not his and he tried to make out an alibi. The Judge did not believe the alibi and thought his evidence of no weight. Bankey Behari was also distrusted by both sides and called by the Judge. He admitted that one day just after the application for probate when he was in the Bar Library he was taxed with having signed Narain's will and that he did not deny it directly. What he said was "As far as I recollect I have not signed any will." "Those" he adds "were the words I uttered. I meant "to absolutely deny my signature. But I did not say that I had never signed." Before Mr. Brett he was more positive and more

intelligible. He declared that his name on the document in dispute was not his signature. "My signature" he said "has been forged." To some extent however his evidence curiously corroborates the Appellant's case. He admits that on the evening of the 18th of May somebody came to him and said Narain wanted him. "The messenger" he says "told me that Narain Das had heard I was in Tikari and that others were with him and he wanted to see me as he was ill. He said perhaps that the men were writing something." "My grandfather" he said in another part of his evidence "was a pleader of the Raj and Narain Das had been an influential servant so it did not strike me as peculiar that he sent for me." All this is entirely in accordance with the story told by the witnesses for the Appellant. As to what followed there is a direct conflict of evidence. The Appellant's witnesses say Bankey Behari obeyed the summons and witnessed Narain's will. He says he "was tired and did not go," showing as the Judge thought an indifference to his professional prospects remarkable to say the least of it in so youthful a practitioner. The District Judge in whose Court he practices did not believe him. The High Court did. They found no resemblance between the signature he made at the foot of his deposition in Court and the signature shown to him a few minutes before and denounced by him as a forgery. They seem to have thought a difference in the handwriting at that critical moment conclusive in his favour. Moreover they thought the writing on the will "an unformed writing like that of a schoolboy"—the signature "of a beginner just learning to write" while the signature on the deposition was "in the running hand of a person much accustomed to writing in English." On the other hand

the District Judge observes that the words on the will "have a genuine look about them" . . . "they do not look like an imitation." Their Lordships have had the will before them. So far as regards the character of the writing they are unable to agree with the learned Judges of the High Court. No fault is to be found with the signature. It seems to be written boldly and would pass for the writing of a well educated English gentleman.

It is unnecessary to discuss in detail the evidence of the witnesses for the Appellant. The District Judge has gone through it very carefully noticing apparently everything that struck him as suspicious in statement or demeanour. On the whole he came to the conclusion that there was no sufficient reason for refusing credence to the Appellant's story. One circumstance may be noticed in passing which in the view of Trevelyan J. tells strongly against the Appellant while the District Judge thinks it throws no light on the case. It is this :—Narain's accounts were kept by Tunu. The accounts for the last year are missing. If they had been forthcoming and if they could have been trusted they might have been useful in clearing up some disputed points. The absence of these accounts gave rise to a good deal of argument before the District Judge. But he was, he says, "unable to form any definite opinion as to the question as to on whom the disappearance casts suspicion." Trevelyan J. felt no difficulty on that score. "There is" he says "no doubt to my mind that this book can only have been kept back by Dowlat's party." And then he proceeds to draw the inference which suppression of evidence invariably suggests. Their Lordships do not think it by any means clear that Dowlat's party ought to be held accountable for the non-production of the last year's book of accounts.

At any rate it is obvious that an unscrupulous man concerned in forging a will would not scruple to manipulate accounts for his own purposes if he thought he could do so without fear of detection. As the whole book was written up by Tunu there would be no difficulty in his replacing an incriminating page by a new leaf with all necessary entries to confirm his story. It is difficult to see why Tunu should have suppressed a piece of evidence which he might so easily have made to serve his purpose.

The District Judge and the learned Judges of the High Court both deal with the main question at issue on a broad view of the whole case. It is little wonder that they come to opposite conclusions, for they approach the matter from very different points of view. Patiently and with every appearance of impartiality the District Judge sets himself to investigate the actual facts. He tries to place himself in the position of the alleged testator with all his actual surroundings. On the other hand Ameer Ali J. who claims to be intimately acquainted with the usages and habits of thought of his Hindu fellow countrymen though not himself, it may be presumed, a member of their community, approaches the question from the point of view apparently of a pious Hindu gentleman scrupulous and exact in the discharge of every moral and religious duty—so scrupulous indeed and so exact that in the opinion of the learned Judge it becomes a matter of grave importance that no provision is to be found in the will for the worship of a family idol whose worship as it appears was maintained during the testator's lifetime by the annual expenditure of the sum of one rupee. Tried by so high a standard the will is found wanting in many things. But for all that it is not an unlikely disposition for such a man as Narain Das to have made under the circumstances. As regards the

monthly allowances to Uttim and Rajkali it will be observed that the aggregate of the two allowances is precisely the sum which Narain had been in the habit of providing for the maintenance of the north house. And it is perhaps remarkable that the allowance to Uttim which seems to the High Court so niggardly as to throw doubts on the genuineness of the will is the exact amount which Rajkali and Babban allotted to her when they assumed to divide the inheritance between them on the 6th of July 1893 under a deed of compromise.

The learned Judges of the High Court have embarked upon an enquiry as to the truth of the charges against Rajkali and Babban contained in the introductory part of the will. Their Lordships cannot think that the enquiry is much to the purpose. There is certainly no evidence in support of these charges. But in estimating their value and importance one cannot help seeing that something must be attributed to the zeal of the two young maktars who would probably exert all their skill to amplify and embellish whatever Narain may have said in disparagement of those whom he proposed to disinherit. Something too may be due to the ill-feeling between the inmates of the two houses which must have been tolerably bitter if one is to judge from the steps which Babban thought fit to take against Dowlat when Narain lay a-dying. Whatever the will may say to the discredit of Babban all that seems to be alleged against Rajkali is ill temper coupled with disobedience. We know that Narain preferred living with Dowlat whatever the reason was. The will hints at "several other reasons"—a suggestion one would think too vague to be taken seriously. But in its vague generality Ameer Ali J. finds a deep meaning. He has no doubt that those apparently innocent words were intended to

convey "an insinuation of unchastity." It is obviously quite impossible to accept that construction on the faith of a statement whatever may be its source or apparent authority which the Appellant had no opportunity of meeting by direct evidence or testing by cross-examination. In the Court of First Instance as far as we can see the point was not even suggested. It is not alluded to in any one of the 27 reasons set forth in the memorandum of appeal and certainly it is satisfactory to find that it escaped the notice of Rajkali and her advisers. In her petition of objection put in on the 14th of July 1893 she alleges that "several of the statements made in the alleged will are false." She avers that she "was never disobedient to her husband nor was he ever displeased with her" but she makes no reference to the imputation of unchastity which she naturally would have resented if she had supposed that the will contained any insinuation of the sort. In the course of the litigation and at the trial the Appellant certainly made a direct charge of unchastity against Rajkali a charge for which there appears to have been no foundation whatever. But it would be a mistake to connect that charge with anything in the will. It seems to have been provoked by the attacks which Babban and Rajkali made on the Appellant at the time of Narain's death. Insulted as she was and treated with great cruelty it is hardly surprising that Dowlat Koer should attempt to retaliate with any weapon she could think of.

Some minor points were pressed. There was the non-registration of the will—due perhaps to Narain's state at the time. Then it was said that the witnesses to the will were in social position inferior to the persons who attested the lease to Chbedi and the lease to Tunu. That may be accounted for by the circumstances under which

the will was executed and after all the inferiority may not have been so great as it was represented. At least we find that one of the witnesses to the two leases who is described as a "rais" or "big man" says of "himself my profession is service" but I am not in any employ." Then it was pointed out that the witnesses to the will were on their own showing singularly reticent as to the transaction in which they say they were engaged. So they were and this reticence is one of the difficulties in the case. But even here the evidence is not all one way. Sheo Pershad for example says he told some mokhtars. Among others he says he told Gopal Lal whom he pointed out in Court. About the 23rd May he says he told him that Narain Das was ill and had made a will. Now Gopal Lal seems to have been an adherent of Babban and to have been the writer of the deed of compromise between Babban and Rajkali which has already been mentioned. And he was not called to contradict Sheo Pershad's statement.

It is not necessary however to discuss these points further. On a review of the whole case their Lordships are of opinion that the Appellant has established the genuineness of the will and that the High Court were not justified in overruling the decision of the District Judge.

There Lordships will therefore humbly advise Her Majesty that the decision of the High Court ought to be reversed with costs and the judgment of the District Court restored. The Respondents will pay the costs of the Appeal.
