

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Musammât Chanda Deî and another v. Madho Saran, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 6th June 1907.*

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Present :

LORD ASHBOURNE.

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ARTHUR WILSON.

*[Delivered by Lord Ashbourne.]*

Their Lordships do not deem it necessary to defer announcing the conclusion at which they have arrived in this case.

The Appellants appeal from a judgment and decree of the High Court of Judicature for the North-Western Provinces, Allahabad, dated the 3rd February 1903, which reversed a judgment and decree of the Court of the Subordinate Judge of Moradabad, dated the 30th June 1900. The main question discussed before their Lordships was as to the due execution of a Will, dated the 2nd July 1895, and made by a testator named Ram Lal. It is unnecessary to consider many of the circumstances which have been presented to their Lordships in the course of the discussion. The Will in question has been read in the course of the argument and examined in detail. It purports to be signed by the testator and by seven witnesses, and of those seven witnesses four have been examined and have given their evidence in support of the execution of the Will. It is stated that they

were men of respectability. The other three witnesses were not examined, and a good deal of the argument addressed to their Lordships was directed to pointing out that it is a matter of grave suspicion that the person described as the principal witness (the Pleader) was not called, and that the Plaintiff also was not called. It was urged that this fact indicated that the Will, although its execution was proved in the manner already stated, was open to observation and ought to be scrutinized with the greatest care. This question was, however, dealt with very fully in the Court below, where it was pointed out that there were several circumstances that went to corroborate the evidence given by the four witnesses mentioned. Their Lordships are also impressed by the circumstance that the Will was produced within three days after the testator's death and openly relied on.

The judgment of Sir John Stanley, C.J., went into the points of suspicion and examined them with great care. Their Lordships regard the evidence that has been referred to—and it was so regarded by the learned Chief Justice—as giving ground for suspicion, and they assent to the comments made upon it. In the opinion of their Lordships; however, the topics relied on by the Appellants cannot displace the weight to be given to the other evidence in the case, which was dealt with so fully in the clear and convincing judgment of the learned Chief Justice.

Their Lordships will therefore humbly advise His Majesty to affirm the judgment of the High Court and to dismiss this Appeal.

The Appellants will pay the costs of the Appeal.

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