

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Musammat Bulli Kunwar v. Musammat
Bhagirathi, from the High Court of Judicature
for the North-Western Provinces, Allahabad ;
delivered the 24th March 1905.*

Present :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

THE only question before their Lordships in this case is whether a will, which is said to have been executed by one Shib Lal on the 10th December 1896, was, or was not his will, or was a forgery. Their Lordships put the question before them in that way because the defence, and the issues framed in the suit, raised another question. The written statement of the Defendant (the present Appellant) alleged that for a week before his death Shib Lal was unconscious, or in such a state of mental weakness through illness that he was unable to execute the will. Apart from the evidence of the witness Duni Chand, substantially no evidence was given of the testator's being unable to execute his will on the 10th December, and the evidence that he was competent to do so—including the evidence of one of the Defendant's witnesses—is overwhelming.

The Plaintiff, however, raised another question, upon which the Subordinate Judge expressed his opinion. It was alleged that, after the death of his father, Shib Lal had made an arrangement by

which, in the events which had happened, the father's estate became divisible between himself and his sister-in-law, the present Respondent, in equal shares. The Subordinate Judge held that, as no agreement was proved, there was no binding settlement, but he undoubtedly held that some honourable understanding between the parties had been arrived at, and was acted upon up to the time of Shib Lal's death. Their Lordships mention this, because the fact that the Respondent put forward that case is used by the Subordinate Judge, and is relied upon by the learned Counsel for the Appellant, for the purpose of showing that Shib Lal could not under those circumstances have made a will in the terms of the one before the Court. Their Lordships do not appreciate this point. The Respondent claims to be entitled under the alleged agreement, but if she failed in that contention she claimed alternatively whatever rights she had under the will. Nor was there any inconsistency in the witnesses giving evidence of the alleged arrangement and at the same time speaking to the fact of the execution of the will. The Subordinate Judge found that the will was not the will of the testator, that, in fact, it was a forgery. He appears to have done so primarily from a consideration of the contents of the will, which he considered so extraordinary as to overbalance altogether the evidence of the witnesses who spoke to having been present and seen the testator sign the will, and to having themselves signed the will as witnesses. The evidence of these witnesses must be simply perjury if they were not speaking the truth, because there was no room for any misunderstanding on their part. The learned Judge brushed aside the whole of this evidence, saying that it was "full of contradictions and inconsistencies," but that he

“ would have disregarded most of them ” if the will were not of such an extraordinary character.

The High Court set aside the Judgment of the Subordinate Judge, and commented on it, severely, no doubt, but not, in their Lordships’ opinion, unjustly. The learned Judges think that the Subordinate Judge’s method of procedure in discussing the question before him was an erroneous one, namely, first to make up his mind about the contents of the will, and then to look at the positive evidence in favour of its execution from that standpoint. They have discussed at great length and have analysed the provisions of the will and the evidence of the witnesses who spoke in favour of the will. They have also discussed the grounds upon which it was alleged before them that the evidence of those witnesses ought not to be received, and the grounds on which the Subordinate Judge rejected it. Their Lordships are entirely satisfied with the manner in which the case has been dealt with in the Judgment of the High Court, and they would be only repeating what the Judges of the High Court have expressed in lucid and felicitous language if they were to state their reasons for affirming that Judgment. They are entirely satisfied with those reasons, and will adopt them as their own.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of it.

