

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gangamoyi Debi v. Troiluckhya Nath Chowdhry and another, from the High Court of Judicature at Fort William, in Bengal; delivered the 16th February 1906.*

---

Present at the Hearing :

LORD MACNAGHTEN.  
SIR FORD NORTH.  
SIR ANDREW SCOBLE.  
SIR ARTHUR WILSON.

[*Delivered by Sir Ford North.*]

The only question to be decided on this Appeal is, whether the Appellant's husband Brojo Nath Chowdhry, who died on the 23rd of April 1867, died intestate, as the Appellant alleges, or left a will, as the Respondents contend. If he did make that will, the Appellant is out of Court. The Subordinate Judge of Rajshahye decided in the Appellant's favour, holding that the will was a forgery; but the High Court of Judicature at Fort William reversed that decision, and dismissed the Appellant's suit, with costs.

Hari Nath Chowdhry, who married Raj Lakhī Debi, and died many years before 1867, left three sons, who succeeded to their father's property, viz., Brojo Nath Chowdhry, the Appellant's husband; Mathura Nath Chowdhry, who died about 1870, and whose sons are the Respondents on this Appeal; and Jadab Nath Chowdhry, who died before 1867, intestate and unmarried, whereupon his mother Raj Lakhī Debi succeeded to his share in the father's estate.

Brojo Nath Chowdhry resided at Sarippur or Kasimpur, in the district of Rajshahye; but some months before his death he removed to Nattore, on account of his health, and there he remained until he went to Rampura. There is no doubt that while at Nattore he was very ill, and ultimately his recovery was considered hopeless. While he was there a cousin and great friend of his named Girish Chunder Lahiri—who seems to have been in a superior station in life, and had received the title of Rai Bahadur—came over to Nattore, and took Brojo Nath Chowdhry back with him to his own house at Rampura, where he stayed till he died. The Appellant and one of her witnesses say the death was only two days after the removal; while two witnesses for the Respondents put it at five or six days and 10 or 12 days respectively. The doctor also who was called in at Rampura says he attended him for five or six days, and he saw from the first that the case was hopeless. On the day before his death, according to the Respondents' evidence, he went to the Registry Office, and there at 4 p.m. presented for registration the will in dispute. It bore his signature and seal, and was attested by five witnesses. Four of those witnesses died before the trial; but the fifth, the doctor of Brojo Nath Chowdhry, was called as a witness. The execution of the will was admitted by Brojo Nath Chowdhry, who was identified by two witnesses, and then the will was registered. Each of these four stages was verified by the signature of W. S. Wells, the Registrar. This was on the 22nd of April 1867. The doctor says in his evidence that he signed this will in the presence of Brojo Nath Chowdhry, and at his request, after some discussion with him as to whether he should make a will or not. He thought he attended Brojo Nath Chowdhry for five or six days. He said that many other

persons were present when he signed the will, but he did not know whether any other witness or the testator had signed when he did. He also said that many respectable people came in to see the testator during the time of his attendance. The Subordinate Judge declined to believe this witness because there was some doubt as to an apparent alteration in the date of his attestation of the will, and the explanation he gave was not clear. But this is not wonderful, as the event had happened 31 years before; and the High Court thought, and their Lordships think, that the reasons for not giving weight to the evidence of this witness are quite insufficient. They see no reason to doubt his veracity.

Another reason why the Subordinate Judge doubted the validity of the will was on the ground of the absence of any other respectable witnesses to it besides the doctor, and the probability that other persons were present who would have been more likely to be asked to attest it than the persons whose signatures were affixed to it. But there is not one word in the evidence affecting the respectability and competency of the four attesting witnesses, all of whom were dead before the trial.

Then the Judge also stated that "the general reputation of character which the two identifiers in the registration office enjoyed" tended to throw a cloud of doubt upon the *bona fides* of the transaction. Such evidence of the general reputation of the character of those persons (who are both dead) ought not to have been admitted at all. But it was admitted, and is insufficient to prove what it was said to prove. It would be waste of time to discuss it. But that the signatures of the identifiers were their true signatures was clearly proved.

Then another circumstance relied upon by the learned Judge was "the untimely hour of

“ registration at the registration office, . . .  
“ though the testator was so weak that he did not  
“ survive even 24 hours.” The hour was 4 p.m.  
which *primâ facie* is not unreasonable; and if  
the evidence of the Appellant is to be believed  
her husband had taken a much longer journey  
(from Nattore to Rampura) on the previous  
day without apparently being any worse from it.  
The Appellant also says that on the day in  
question many gentlemen of the town came in and  
saw her husband. Then Lakhi Nath Mazumdar,  
who was at the Registry, says that he saw Brojo  
Nath Chowdhry arrive there in a palanquin to  
get the will registered, and saw him sign and  
seal the registration. A little further on he says  
that at the request of Brojo Nath Chowdhry he  
came to see him at Rampura four or five days  
before his death; that sometimes he was helped  
to sit up, and sometimes used to get and sit up  
himself unaided; that on the morning of the  
next day he told him a will had been executed,  
and showed him the will, but did not request  
him to be a witness; that for two or three  
days before his death he could at times get up  
and sit up unaided, but from one day before his  
death he lost the power of getting and sitting  
up unaided. He was taken in a palanquin.  
The mukhtar Baboos helped him to sit up, and  
he sat up and admitted the will. Then Iswar  
Chandra Ghose says that on the day just  
preceding his death he saw him going out of his  
ledgings in a palki, with a view to go to the  
Court. This evidence would be quite sufficient,  
in their Lordships’ opinion, to answer the  
observations of the Subordinate Judge. But they  
desire to put the case on a higher ground. The  
registration is a solemn act, to be performed  
in the presence of a competent official appointed  
to act as Registrar, whose duty it is to attend the  
parties during the registration and see that the  
proper persons are present and are competent

to act, and are identified to his satisfaction ; and all things done before him in his official capacity and verified by his signature, will be presumed to be done duly and in order. Of course it *may* be shewn that a deliberate fraud upon him has been successfully committed ; but this can only be by very much stronger evidence than is forthcoming here. And this must be specially borne in mind, that no witness has been found who will say that the signature of Brojo Nath Chowdhry in the will and in the Registrar's book is not in his handwriting. The contrary is expressly stated by Lakhi Nath Mazumdar, who adds that his signatures when in good health were better than these. The learned Judge did not believe this witness ; nor that he was present at the time, upon the ground that if he had been he would probably have been invited to attest the will ; but this difficulty does not weigh much with their Lordships.

It is also suggested that Brojo Nath Chowdhry was presumably under the influence of his brother Mathura Nath Chowdhry and was very possibly induced by him to make the will. This assumes, of course, that it was executed by him. But this suggestion was not raised by the pleadings, and is entirely unsupported by any evidence, and need not be further considered. The will does not seem unreasonable for a gentleman in the position of Brojo Nath Chowdhry, and has a genuine look about it. The testator says that, considering the smallness of his property, he does not wish to adopt a son, and vests his property in his brother Mathura, that he may perform all ceremonies and maintain his wife during her life, and his four unmarried daughters, and also give those daughters in marriage, and, if there was any difficulty about living together, the Appellant was to have from Mathura an

allowance of Rs. 120 a year at the rate of Rs. 10 a month for her maintenance, which allowance Mathura should get after the wife's death. He then added that he had married his eldest daughter, and she was to have Rs. 48 a year for her maintenance at the rate of Rs. 4 a month, and he provided that if Mathura did not pay the allowances and daughters' money then he charged them on his estate. Subject to the above the estate was to go to Mathura.

But it is said that the will was suppressed and never acted on. This also is not in accordance with the evidence. It has been proved that the allowance to the eldest daughter has always been paid; that the younger daughters have been provided for out of the estate on their marriages; and that the Appellant also has been paid first Rs. 10, afterwards Rs. 15, and after that Rs. 20 per month, the reason for the increase being that she complained that her allowance was not sufficient, and some increase should be made. The Subordinate Judge said that the will was wisely and prudently kept dark, and that the fact that the Appellant was paid twice as much as she was entitled to under the will showed that there was something rotten in the core of the will, and therefore precaution was taken that the Appellant should have no occasion to dispute it. Their Lordships deprecate this suggestion as not supported by any of the proofs in the case; and have no doubt that the increase of allowance was made by Mathura at the suggestion of Girish Chandra Lahiri Rai Bahadur, for the reason above mentioned. Excluding the evidence of the Appellant, which the High Court declined to accept as reliable, there is no evidence that the Appellant ever claimed any share in the income of the estate.

Their Lordships are clearly of opinion that the decision of the High Court now appealed from was correct, and should be affirmed; and they will humbly advise His Majesty that this Appeal should be dismissed.

The Appellant must pay the costs of the Appeal.

---

