

Waman Ganesh and another - - - - - *Appellants*

*v.*

Sarubai - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 29TH JANUARY, 1924.

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*Present at the Hearing :*

LORD SUMNER.  
LORD PARMOOR.  
LORD CARSON.  
SIR JOHN EDGE.  
MR. AMEER ALI.

[*Delivered by* LORD CARSON.]

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Gangadhar, whose father was Ganpat, but who was given in adoption to the widow of one Gopal, died on the 9th December, 1918, possessed of considerable property, of which he became owner through his adoption.

Waman, his brother before adoption, and Kesheo, his natural mother's sister's son, who are the appellants in the present appeal, applied for letters of administration with a will annexed, said to have been executed by the said Gangadhar on the 30th October, 1918. Under the said will the appellants became joint universal legatees of the property left by the said Gangadhar. The respondent Sarubai, who was a cousin and the next heir in the adoptive family, opposed the application for administration, alleging that the will had been forged by the appellants and Ganpat, the father of Gangadhar. She declined to admit that the signature in the will was that of Gangadhar, and she further alleged (and this

seems to have been eventually the main question to be determined) that as Gangadhar lived in Indore for the greater part of the year for his education, he used to leave a number of blank sheets bearing his signature with the appellant Waman and Ganpat, his father, to facilitate the filing of civil suits, and for other purposes connected with the management of Gangadhar's estate, and it was strenuously contended that the will had been written by Ganpat after the death of Gangadhar on one of the blank sheets bearing his signature.

On the 31st October, 1919, the Additional District Judge who tried the case, and who has very closely examined the evidence, delivered judgment in favour of the appellants and passed an order granting them letters of administration with the will annexed. He held that the signature in the alleged will was in Gangadhar's own handwriting (and that is not now disputed), that Gangadhar was in the habit of leaving blank sheets of paper bearing his signature, and that this was proof that Ganpat and the appellants could have in their possession such a paper. He held, however, that the attempt to show that the will was forged after Gangadhar's death failed.

The respondent appealed from the order of the Additional District Judge to the Court of the Judicial Commissioner of the Central Provinces, and that Court, by their judgment of the 4th August, 1920, set aside the order of the lower Court and dismissed the application of the appellants for letters of administration with the said will annexed with costs.

The Judicial Commissioners base their judgment mainly upon the facts that the will propounded had the appearance of having been written on a paper which already bore the executant's signature, and that it was proved that Gangadhar left blank papers bearing his signature for filing plaints in his absence, and, further, that it was not improbable that Ganpat was in possession of some of these papers after Gangadhar's death.

The Judicial Commissioners were of opinion that the doubt raised by these circumstances as to the genuineness of the will casts a burden on the applicants to prove that the document was executed by Gangadhar as his will, and they were of opinion that the oral evidence on the record was not satisfactory or strong enough to prove the genuineness under the circumstances. They were of opinion that none of the witnesses to the execution of the will appeared to be men of any status, and they also criticised the fact that the father had himself drawn the will.

Their Lordships, having carefully considered all the evidence in the case, cannot agree with the conclusion come to by the Judicial Commissioners. Assuming that a certain amount of suspicion is created by the appearance of the will, and the spacing of the lines as if to fit the contents in before the signature of Gangadhar, which is the only remaining contention of the respondent, their Lordships are of opinion that the burden of proving the execution of the will placed upon the applicants

has been fully discharged. In the first place, the will is a perfectly natural one, and it has been proved beyond doubt by the evidence of the doctor who attended the deceased that Gangadhar, on being told that his case was hopeless, informed him that he would dispose of all his property in the name of his brother; and although Kesheo's name was afterwards included in the will, as well as his brother, this statement, which is unchallenged and accepted by the appellate tribunal, shows the intention of making a will and of leaving the property to his immediate relatives by birth. Seven of the witnesses, of whom one was a scribe, called in to write the will, but who found that it was being already written when he came, and five attesting witnesses, have all deposed to the due execution of the will.

Their Lordships do not think that anything has been suggested in the course of cross-examination which is sufficient to discredit these witnesses, nor indeed were any questions put to them which challenged the accuracy of the accounts they gave. It may be true, as stated by the Judicial Commissioners, that the witnesses to the will did not appear to be men of any status, the majority of them being cultivators, but their Lordships do not think that under the facts of this case, and having regard to the measure of suspicion hereinbefore indicated, that there is sufficient ground for disbelieving their evidence as regards the execution of the will. Their Lordships are therefore of opinion that the decision of the Judicial Commissioners should be reversed with costs, and that the order of the Additional District Judge of the 31st October, 1919, should be restored, and that this appeal should be allowed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

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v.

SARUBAI.

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DELIVERED BY LORD CARSON.

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