Privy Council Appeal No. 6 of 1942
Bengal Appeal No. 17 of 1939

Sarala Sundari Dassya – – – – – – *Appellant*

v.

Dinabandhu Roy Brajaraf Saha (Firm) – – – *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND NOVEMBER, 1943

Present at the Hearing:

LORD ATKIN
LORD PORTER
SIR GEORGE RANKIN

[*Delivered by* LORD ATKIN]

This is an appeal from the High Court of Judicature at Fort William in Bengal which reversed the judgment of the District Judge at Pabna on an application by the respondents for the revocation of the probate of a will of an alleged testator Haralal Saha, which had been obtained by his widow, who is the appellant, in the year 1933.

The circumstances were that Haralal Saha was a man of some age and had been very successful in his business, which was principally that of a moneylender. He owned immovable property in several districts in Bengal and in one district outside. He died in 1927 and, upon his death, there can be no doubt, that his three sons who survived him took possession of the properties. In some instances they had joined in a suit with their mother and were substituted for their father in a partition suit. They got a certificate of succession to enable them to sue on certain debts which were due, no doubt, on the moneylending business. They collected the rents of the immovable properties and they proceeded, both they and the widow, precisely as they would have proceeded if there had been an intestacy.

It would appear that the sons did not pursue the moneylender's business which, at any rate, in five or six years' time had, as the learned Judges found, disappeared; but they had in the name of a company conducted a business in electric lighting equipment, and they had incurred a debt to the present respondents, also for the purpose of their business, of 5,000 rupees. In November, 1933, the respondents had obtained a decree against them for 5,000 odd rupees. Their Lordships have no doubt that at that time they were in financial difficulties, as is shown by the fact that in the next year they were adjudicated insolvent.

In February, 1933, more than six years after the death of the alleged testator, the present appellant applied for probate of a will which she produced then for the first time. It is not surprising that that attracted

a good deal of suspicion. The respondents came to the conclusion that the will was a forged document and in August, 1935, they applied for revocation of the probate.

The first question that arises is more or less a technical question as to whether or not the respondents had a *locus standi* so as to be in a position to apply for revocation of the probate. That depends upon certain clauses in the Succession Act, 1925. By section 263 " The grant of probate may be revoked for just cause." By the explanation, " just cause shall be deemed to exist where "—only three of them need be read—" (*a*) the proceedings to obtain the grant were defective in substance or (*b*) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case, or (*c*) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ".

It may be noticed that the section does not deal expressly, so far, with forgery, but one of the illustrations given in the section is (iii), " The will of which probate was obtained was forged or revoked."

The question arises whether the creditor of an heir who says that he is being or is likely to be defeated in his rights against the heir by reason of property which otherwise appeared to be in possession of the heir being withdrawn by a will, is allowed to move to revoke the probate.

Attention has been called to section 283, which provides: " In all cases the District Judge may "—then " (*c*) issue citations calling upon all persons, claiming to have any interest in the estate of the deceased, to come and see the proceedings before the grant of probate ". It is suggested that it is only those persons who could be cited before the grant of probate who are the persons who could apply to revoke the probate. In their Lordships' view that is putting it on much too narrow a footing. One of the grounds for revoking probate is that the grant was obtained fraudulently by making a false suggestion, which obviously covers the case of putting forward a forged will, just as (*c*) would cover the case of a person putting forward a forged will even if when he or she propounded it he or she did not know it was a forged will.

In dealing with the first point, that the grant was obtained fraudulently, it appears to their Lordships to follow as a matter of course that if a person is complaining that he has in fact been defrauded, he is one of the persons who is injured by the fraud alleged and that that person is entitled to have his redress by applying to revoke the probate and thereby cause the fraud to become inoperative. If he had not such a right as that, it is very difficult to know what right a creditor in those circumstances, or a person injured by the fraud, could have, otherwise the probate would stand and he would be affected by the probate which had been obtained *ex hypothesi* fraudulently.

That is the view which was taken by their Lordships in the case of *Rajah Nilmoni Singh Deo Bahadoor* v. *Umanath Mookerjee* (L.R. 10 I.A. 80.) It has been followed since in Calcutta, and their Lordships feel satisfied that in this case the applicants for revocation had every ground for applying and had a proper locus standi to come into Court and ask that the probate should be revoked.

Thereupon the further question remains to be determined as to whether or not this will was fraudulent. The learned District Judge, after dealing with the circumstances and the evidence, came to the conclusion that though the facts were suspicious, he was not prepared to go so far as to hold that forgery had in fact been committed and dismissed the application.

The learned Judges in the High Court took a different view, and they were both of them quite clearly of opinion that the applicants had established affirmatively that this will was a forged will. That being so, it is unnecessary for their Lordships to deal with the question of onus of proof which in this case does not arise in view of the findings by the High Court.

When their Lordships have to deal with the question of whether or not a document is forged, it is obviously of first importance that they should have the document before them. Their Lordships repeat what was said at the beginning of these proceedings, that it should be considered to be a rule of practice in all cases where the genuineness of a document is in issue, that the parties concerned should bring before their Lordships, either the original document or, at any rate, a photostatic copy of it, so that their Lordships should be in the same position as the Courts in India or elsewhere, of having the document before them and being able to form their own impression upon an inspection. It is so important that, as a general rule, it is probable their Lordships would find it necessary to adjourn any case for the production of such a document if it were not forthcoming. In this case their Lordships have had the advantage of a very full description of the document by one of the learned Judges, Mr. Justice Mitter, by whose very careful account their Lordships have been very much assisted, for it enables them to deal with the issue satisfactorily even though they have not the actual will before them.

It is unnecessary, in their Lordships' opinion, to go through the details which have led the High Court to come to the conclusion that this was a forged document. Their Lordships are entirely satisfied with the judgment of the two learned Judges, which they consider to be convincing; but it is enough to say that the circumstances under which the will was produced in the first instance and the conduct of the parties throw so much suspicion upon the existence of a will that when the document is looked at it is very easy to see that they are face to face with a document which obviously was prepared after the event and which was not a genuine will of the alleged testator.

The will is signed upon paper which there is plenty of evidence to show was used by the testator in his business for the purpose of the numerous legal proceedings which, in his course of business as a moneylender, he would be engaged in for the purpose of having papers and so forth put before the Court. They were papers which the testator was in the habit of signing in blank, signing at the bottom, and occasionally both at the bottom and at the top. This will is written on two such sheets, the first of them signed at the top, the second one signed at the top and at the bottom in the extreme right-hand corner. It is sufficient to say that, upon the appearance of the document, it is reasonably plain that the man who wrote the document was not able to complete the will in such a form as to fit in with the signature so as to make the signature in any sense approximate to the body so as to authenticate the body. The result was that there was a gap of at least two and a half inches which was not filled in at all. Then there was a form which indicated that it was signed by the testator as his last will, which was drawn at the bottom of the page so as to coincide with and approach the signature. In other words, the document is drafted to fit into the signature, and the signature was not put there in order to authenticate the document.

It is unnecessary to deal with all the matters which have been referred to by the learned Judges which help their Lordships to come to the conclusion that this was a forged will. Their Lordships have no doubt at all that the conclusion of fact was well warranted and was in fact right.

In those circumstances the appeal fails and must be dismissed, and their Lordships will humbly advise His Majesty accordingly. The appellant must pay the costs of the appeal.

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In the Privy Council

SARALA SUNDARI DASSYA

v.

DINABANDHU ROY BRAJARAF SAHA
(FIRM)

DELIVERED BY LORD ATKIN

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