

Bur Singh Vs. Uttam Singh

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Court : Mumbai

Decided On : Dec-02-1910

Reported in : (1911)13BOMLR59

Judge : Macnaghten, ;Mersey, ;Robson, ;Arthur Wilson and ;Ameer Ali, JJ.

Appellant : Bur Singh

Respondent : Uttam Singh

Disposition : Appeal allowed

Judgement :

Robson, J.

1. The main question in this appeal is as to the validity of the will of one Shib Singh, who was a Hindu Jat, residing at Garhdiwala in the district of Hoshiarpur in the Punjab.

2. There is a further point as to whether a portion of the land comprised in the will is ancestral property or not. That question is substantially one of fact. Both the Courts below are agreed in finding that the property in dispute was acquired, and no reason has been shown to their Lordships which would justify them in coming to a different conclusion.

3. Shib Singh fell seriously ill in May 1898. The will in dispute was made by him on the 11th June 1898 and he died on the 23rd of the same month. It is alleged by the respondents in their plaint that the will was executed when he was seriously ill, weak--really at death's door--and not in possession of his right senses and intellectual powers, and was under the undue influence of Jawala Singh, father of the defendants, Harbans Singh and Bur Singh.'

4. None of the Judges had the advantage of seeing the witnesses as the evidence was taken wholly on deposition before the trial. There was very little conflict of evidence on the particular facts alleged, so far as those facts were material to the making of the will or the condition of the testator, and the only question for the Courts was whether, on such facts, the charges of testamentary incapacity and undue influence had been established.

5. Shib Singh was brought from Garhdiwala to Hoshiarpur for medical treatment on the advice of Mr. Chatterji, a mission teacher with whom he was acquainted, and was placed under the care of two doctors. He was accompanied by his relative the defendant Bur Singh and his brother-in-law Jawala Singh. His physical condition became, no doubt, rapidly worse, and he, or someone about him, sent for his lawyer, Pandit Jagan Nath, in order to take instructions for his will. This gentleman gave evidence for the appellants. He was an old friend and school fellow of the testator, and had been his counsel in practically all his litigation. He took his instructions from Shib Singh himself, and visited him for that purpose on several occasions before the day on which the will was executed. It cannot be said that, so far as the relationship of the beneficiaries to the testator is concerned, there was anything unnatural or unusual in the will. An allowance for maintenance was made to the wife', certain property was left to the defendants Bur Singh and Tara Singh, who were relatives, and whose grandfather is stated to have had care, of Shib Singh when the latter was a boy and to have rendered him important services. The remainder of the property went to his nephew, Harbans Singh, who had been born in Shib Singh's house and brought up by him, he himself being childless.

6. The will was dictated by the Pandit Jagan Nath (in the presence of Shib Singh) to a petition writer, Mahdo Ram, who knew Shib Singh (sic) Datta and several Zemindars were also present. While the dictation was going on Shib Singh made various observations on the clauses, and some alterations were made at his suggestion in the draft; for instance, he increased the provision for his wife. Dr. Datta afterwards read the completed document over to him and satisfied himself by questions that he understood it, and it was duly signed. Jagan Nath had previously sent for the Registrar to have the will registered, but sub-Registrar had come and gone before the will was signed, and in the course of conversation on this subject Shib Singh said he was under the treatment of doctors and he would have it signed by them. On the following day, therefore, both doctors signed it, and, according to the custom of their profession in India in such cases, they added a statement of their opinion that the testator, though ill, was in his senses. Dr. Datta gave evidence at the trial in favour of the will, but Dr. Duni Chand had in the meantime died.

7. It would be difficult to have a stronger prima facie case in favour of the will, and it was fully accepted by the District Judge. The Chief Court also say that they 'see no reason to doubt the evidence of the Rev. Mr. Chatterji and Dr. Datta that on the day when the testator signed the will he was in, his senses, or in other words, that he was not unconscious or wandering in his mind,' but they are of opinion that he was 'in a condition which rendered him powerless to withstand the influence of [the defendants] Bur Singh and Jawala Singh,' who were in close attendance upon him, and in whose hands the Chief Court thinks that 'he was merely a tool.' They, add that in their opinion, those defendants 'took advantage of the testator's helplessness to force or induce him to execute it for their benefit.' Their Lordships are unable to find any evidence on the record which would justify this conclusion.

8. The testator had been a man of intemperate habits, and was within twelve days of his death when the will was made; but there is no evidence to indicate that he was not sober, or not of a sound disposing mind when he was transacting the business of his will on the nth June. Nor is there any evidence whatever that the defendants Bur Singh and Jawala Singh used the undue influence which is alleged, beyond the bare fact that they were the relatives who accompanied Shib

Singh to Hoshiarpur, and were selected by him for benefits under the will.

9. It is stated that up to 1896 Bur Singh and Shib Singh were at enmity, and that there were open quarrels and litigation between them. That does not appear, however, to have prevented the testator from afterwards employing Bur Singh in the management of his lands, or from sharing his table with him. The District Judge finds that Bur Singh's services to the testator are proved both from documents and from the oral evidence of very respectable witnesses. These old family quarrels do not therefore, of themselves, show that Bur Singh could not have been a person whom the testator desired to benefit.

10. It was alleged on the part of the defendants that Harbans Singh had been duly adopted by Shib Singh as his son, and the District Judge found this adoption proved. The Chief Court differed from him on this point, and drew some inferences unfavourable to the defendants' case generally from the fact that the allegation had been put forward. It is unnecessary for their Lordships to decide the question of adoption, but they are of opinion that the evidence given in relation to that question gives rise to no material reflection on the evidence of the independent witnesses in support of the will. The Chief Court treats the evidence of Jagan Nath as not quite 'beyond criticism,' because, in their opinion, he acted in the matter of the will as though he were ignorant of facts disclosed in previous proceedings relating to the position of Harbans Singh and Bur Singh which it was thought probable he would remember, but they do not go so far as to reject or discredit his testimony. Indeed Jagan Nath was not cross-examined on these points, and there is really nothing in them which is not susceptible of explanation without reflecting in any way on his independence and good faith as a witness.

11. With regard to the Rev. Mr. Chatterji it was suggested apparently as a circumstance of suspicion against him that he had at one time bought a piece of land for his mission from Shib Singh; but there is nothing to show that the transaction was not a normal and perfectly proper matter of business.

12. No suggestion is made against the good faith of the doctors or of Mahdo Ram.

13. The onus of proving the testamentary capacity of Shib Singh of course lies on those by whom the will is propounded and in their Lordships' opinion they have discharged that obligation by the evidence indicated above. Such evidence is not displaced by mere proof of serious illness and of general intemperance, and yet that is as far as the evidence of the respondents can fairly be said to go. So far as the charge of undue influence is concerned, all that is shown on the part of those attacking the will is that there was motive and opportunity for the exercise of such influence by the defendants, and that some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer degree. Circumstances of that character may sometimes suggest suspicion and would certainly lead the Court in the present case to scrutinize with special care the evidence of those who propound the will; but in order to set it aside there must be clear evidence that the undue influence was in fact exercised, or that the illness of the testator so affected his mental faculties as to make them un-equal to the task of disposing of his property.

14. Such evidence is not only lacking in this case, but, in the opinion of their Lordships, the circumstances attending the making and execution of the will are not reasonably consistent with it.

15. Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed with costs, and the judgment of the Chief Court set aside and that of the District Court restored with costs in both Courts.