

Muhammad Ismail Khan and ors. Vs. Hamida Khatun and Bibi Haji Begam and anr.

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Court : Allahabad

Decided On : Apr-14-1920

Reported in : AIR1920All311; (1920)ILR42All509

Judge : Grimwood Mears, C.J. and ;Pramada Charan Banerji, J.

Appellant : Muhammad Ismail Khan and ors.

Respondent : Hamida Khatun and Bibi Haji Begam and anr.

Judgement :

Grimwood Mears, C.J. and Pramada Charan Banerji, J.

1. In this case the contest is concerned with an alleged will of one Haji Yakub Khan and with his suggested legal and mental disabilities. He was a man born in 1852, or thereabouts, and had married one wife Haji Begam. They had as issue a son and a daughter. Both the son and daughter died, one about 1897, and the other about 1907, and there is now left surviving a grand-daughter, aged about fourteen years.

2. On the 1st of June, 1917, Haji Yakub Khan is said to have made a will giving to his granddaughter the 1/3rd share of his property which he as a Muhammadan had prima facie the right to bequeath. He died on the 2nd of June, 1918, that is, just one day more than a year after he is said to have executed the will referred to

above.

3. The points which arise in this appeal are:

Whether in the circumstances of Haji Yakub Khan's position, he was competent to make a will; (2) whether on the 1st of June, 1917, he executed the document which is put forward' and relied upon by the plaintiffs as his will; (3) whether he was of sound disposing memory and (4) lastly whether the will can be impeached on the ground of undue influence.

4. The first point is a pure question of law and depends upon this circumstance, that in the year 1897 Yakub Khan voluntarily applied that his property might be managed by the Court of Wards. That application was acceded to, and Yakub Khan thereupon became a person who under Section 194 of Act XIX of 1873 had been declared by the Local Government on his own application to be disqualified from managing his estate [see Section 194 Clause (g)]. Now although Yakub Khan had made that application he was undoubtedly from time to time extremely dissatisfied with the restraint which was thus imposed on him and made several ineffectual attempts to secure the restoration to him of full managerial powers.

5. At the outset the legal effect of his application was that he became a ' disqualified proprietor ' and it is said that he remained a ' disqualified proprietor ' down to the day of his death in 1918. The point is important, because in 1917 (the date of the alleged will) disqualified proprietors were unable without the permission of the Court of Wards to make a will. It was, as we have said, under the provisions of Clause (g), Section 194, of Act XIX of 1873 that his property came under the control of the Court of Wards. The section embraces two classes of persons, those who have their property taken out of their control in invitoe, and those who of their own free will apply for the protection of the Court of Wards.

6. Under the 1873 Act, no distinction was made between these classes of persons, all were disqualified proprietors. The sixth chapter of that Act, which alone relates to the Court of Wards, was repealed by Act III of 1899 of the Local Council. In that Act Section 8 related to the class of persons who are considered to require protection, whether they wish it or not, and subsection 9 deals with the persons who,

like Haji Yakub Khan, request the Court of Wards to manage their property. The reason for this appears in Section 34. The first class of persons are therein for the first time declared incompetent without permission, inter alia, to make a will, whilst those persons who come under Section 9 are not deprived of the ordinary right of testamentary disposition. We think that the provisions of Section 2, Sub-section (2), of the 1899 Act were designed to achieve, amongst other things, the result of placing in Section 9 as opposed to Section 8 those who had originally applied under the Act of 1873 for their estates to be managed, and thus to leave unimpaired whatever testamentary power they possessed. Therefore by Sub-section (2) of Section 2 the application of Haji Yakub Khan was from 1899 deemed to have been made under that Act and to have the consequences flowing from that Act.

7. The Act of 1899 was repealed by Act No. IV of 1912; a clause corresponding to Section 2, Sub-section (2), is to be found in it and similar provisions drawing sharp distinctions between disqualified proprietors and those persons who of their own request had made over the management of their estate to the Court of Wards. The same restriction on the power of making a will is continued as regards disqualified proprietors. Deciding as we do that Haji Yakub Khan ceased to be a disqualified proprietor by virtue of Act III of 1899, it follows that he had a full right to make a will. We might add that in 1910 the Board of Revenue took the same view (R. 163); a view shared later by the Collector in 1916, (R. 235). Accordingly the point of law urged by the appellant fails.

8. [After discussing the facts of the case their Lordships dismissed the appeal and the objections with costs.]