1964

February 17.

RAMCHANDRA RAMBUX

v.

CHAMPABAI AND OTHERS

(K. SUBBA RAO AND J. R. MUDHOLKAR JJ.)

Will—Genuineness—Credibility of witnesses—Surrounding circumstances and probabilities, if court can look into—Removal of suspicious circumstances, if propounder has to satisfy the court.

The appellant filed a suit claiming the property of one R which was in possession of R's widow on the allegation that R had executed a will bequeathing almost his entire property to the appellant and practically excluding his widow and daughters. The ground on which the widow and the daughters were excluded is said to be the strained relations which had developed between R and his wife. The widow denied the execution of the alleged will and challenged the genuineness. The Trial Court holding that the will was genuine decreed the suit. On appeal, the High Court dismissed the suit holding that the will was not genuine. The finding of the High Court was based on the evidence and the attending circumstances appearing in the case. On appeal to this Court by a certificate granted:

Held: (i) In order to judge the credibility of the witness, the Court is not confined only to the way in which the witnesses have deposed or to the demeanour of the witnesses, but it is open to it to look into the surrounding circumstances as well as the probabilities, so that it may be able to form a correct idea of the trustworthiness of the witnesses. This issue cannot be determined by considering the evidence adduced in the Court separately from the surrounding circumstances brought out in the evidence, or which appear from the nature and the contents of the document itself.

(ii) It is necessary for the propounder to satisfy the court about the genuineness of the will by removing all suspicions which naturally flow from the various circumstances.

Surat Kumar Bibi v. *Sakti Chand*, (1928), L.R. 56 I.A. 62, *Krishto Gopal* v. *Baidyanath*, A.I.R. 1939 Cal. 87, *Chotey Narain Singh* v. *Mt. Ratan Koer*, (1894) L.R. 22 I.A. 12, *H. Venkachala Iyengar* v. *B. N. Thaimmajamma*, [1959] Supp. 1 S.C.R. 426, *Shashi Kumar Banerjee* v. *Subodh Kumar Banerjee*, C.A. No. 295 of 1960, dt. Sept. 13, 1963 (Non-reportable and *Tyrell* v. *Painton*, (1894) P. 151, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 758 of 1963.

Appeal from the judgment and decree dated February 14, 15, of the former Bombay High Court in Appeal No. 516 of 1957 from original Decree.

J. B. Dadachanji, Ravinder Narain and *O. C. Mathur*, for the appellant.

Girish Chandra and *Sardar Bahadur*, for respondents Nos. 1, 2(i) to 2(iv), 3 and 4.

February 17, 1964. The Judgment of the Court was delivered by:—

MUDHOLKAR, J.—The question which arises for consideration in this appeal by a certificate granted by the High Court of Bombay is whether a will alleged to have been executed by one Ramdhan on May 23, 1947 is genuine or is a fabrication. By this will, Ramdhan is alleged to have bequeathed almost his entire property consisting of 16 fields assessed to land revenue at Rs. 425/- per annum, five houses, a shop and movables consisting of 800 tolas of gold, 1,000 tolas of silver, Rs. 50,000/- cash and Rs. 15,000/- due from debtors as well as cattle, agricultural implements, utensils, etc., to the appellant, and practically excluded his widow, Sitabai and his three married daughters. The appellant is the grandson of one of the three predeceased uncles of Ramdhan, and the ground on which the widow and the daughters were practically excluded by Ramdhan is said to be the strained relations which developed between Ramdhan and his wife during his last days.

Ramdhan died on October 31, 1948, and Sitabai, who was all along living with him, came into possession of Ramdhan's property. Admittedly, the appellant did not try to disturb her possession. According to him, he allowed Sitabai to remain in possession on his behalf, and that for some time she was managing the estate in a satisfactory way. Later on, however, she, in utter disregard of the appellant's interests, began to give away some portions of the property to her daughters and strangers, even though she knew that the property had been bequeathed to him by Ramdhan, and that she was entitled to receive only a maintenance of Rs. 40/- per month under the will of Ramdhan. It may be mentioned that Ramdhan was a resident of Peepalgaon in the district of Parbhani, and the entire property, movable as well as immovable, is at Peepalgaon itself.

Upon these allegations, the plaintiff instituted the suit out of which this appeal arises, in the District Court at

1964

Ramchandra Rambux v. Champabai

Mudholkar J.

Parbhani. Sitabai denied the execution of the alleged will by Ramdhan, and also denied the relationship claimed by the appellant with Ramdhan. According to her, after Ramdhan's death she was in exclusive possession of the property, that she is a helpless widow without a male issue, and that the appellant taking advantage of this fact has set up a false will and laid claim to Ramdhan's property. While admitting that the immovable property had been correctly set out in the plaint, she challenged the correctness of some of the items of the movable property. During the pendency of the suit, one Madanlal was joined as a party to it on the basis of his claim to be the adopted son of Ramdhan. He also challenged the genuineness of the will. According to him, he was adopted by Ramdhan in the month of Chait, Samvat, 1999 according to the prevailing custom in the State of Udaipur. Sitabai died during the pendency of the suit, and her daughters, Champabai, Rambhabai, and Rajubai as also Ram Pershad, one of Sitabai's sons-in-law, who was alleged to have obtained possession of the property after the death of Sitabai, were brought on record as the legal representatives of Sitabai.

The trial Court held in favour of the appellant that he was related to Ramdhan, as alleged by him, and that the will executed by Ramdhan was genuine. It also negatived Madanlal's claim of having been adopted by Ramdhan. On these findings, that Court decreed the appellant's suit. The legal representatives of Sitabai thereupon preferred an appeal before the High Court, which held that the will set up by the appellant is not genuine, and on that ground, dismissed his suit.

In support of the will, the appellant examined himself, the scribe, Venkat Rajaram and three of the attesting witnesses, Raja Kaniahprasad, Rasheeduddin Ahmed and Wamanlal. The appellant also examined some witnesses in support of his contention that the property bequeathed to him under the will was entrusted by him to Sitabai after the death of Ramdhan. On the other hand, the respondents have led evidence to show that Ramdhan could not have been at Hyderabad where the will is alleged to have been executed, on May 23, 1947, because till the afternoon of the

previous day he was at a village nearly 300 miles distant from Hyderabad.

The High Court, on a consideration of the entire evidence adduced by the parties, came to the conclusion that the will was prepared under highly suspicious circumstances, and that the evidence adduced by the appellant was not such as to satisfy it that the alleged will was a genuine one. According to the High Court, the circumstances appearing in the case indicate that the alleged will was "in all probability" a false document brought into existence without the knowledge of Ramdhan. The High Court rightly pointed out that the nature of proof which was required in a case of this kind was that laid down by the Privy Council in *Sarat Kumari Bibi* v. *Sakhi Chand*(1), where it has been stated that in all cases in which a will is prepared under circumstances which arouse the suspicion of the Court that it does not express the mind of the testator, it is for the propounder of the will to remove that suspicion. According to the High Court, the evidence led by the appellant was so unsatisfactory that it was impossible to give any effect to the alleged will.

Mr. Dadachanji's grievance, however, is that the entire approach of the High Court to the evidence in this case was wrong, because it first took into consideration the various circumstances, and then judged the credibility of the witnesses in the light of those circumstances. In support of his contention, he has relied upon the following observation of Biswas, J. in *Kristo Gopal* v. *Baidya Nath*(2):

> "It is difficult to avoid the conclusion that the learned Judges for some reason or other must have formed the idea that the will was not a genuine document, and that having formed such an idea, he looked at the evidence of each of the witnesses with a suspicious eye. On no other hypothesis is it possible to explain the criticism which he has led himself to make."

The learned Judge has supported his observation by quoting the following observations of Lord Watson in *Chotey Narain Singh* v. *Mt. Ratan Koer*(3):

(1) (1928) L.R. 56 I.A. 62. (2) A.I.R. 1939 Cal. 87.

(3) 22 I.A. 12, 23.

1964

Ramchandra Rambux v. Champabai

Mudholkar J.

"The theory of improbability remains to be considered; and the first observation which their Lordships have to make is that, in order to prevail against such evidence as has been adduced by the respondent in this case, an improbability must be clear and cogent. It must approach very nearly to, if it does not altogether constitute, an impossibility."

The learned Judge has then observed as follows:

"In a case where..attesting witnesses are produced and they give clear and cogent testimony regarding execution, one should require very strong circumstances to repel the effect of such testimony. It will not do to talk airily about circumstances of suspicion. It is no doubt true that a person who takes it upon himself to dispute the genuineness of a will cannot be expected to prove a negative in many cases. At the same time, the difficulty in which, on his own seeking, he places himself, will not relieve him of the burden—it may be a heavy burden—of displacing the positive testimony on the other side. If he rests his case on suspicion, the suspicion must be a suspicion inherent in the transaction itself which is challenged and cannot be a suspicion arising out of a mere conflict of testimony."

Then the learned Judge went on to observe that if there was evidence to show that the will was actually made, it would not be relevant to enquire whether there was any occasion or motive for the execution of the will, and that if such a test were to be applied in every case, no will could probably be proved at all.

The questions which we have to consider are whether there was, in fact, a will, that is to say, whether Ramdhan did execute a will during his lifetime, and if so, whether the document upon which the appellant relies is a will executed by Ramdhan and duly attested by witnesses. The appellant can prove these facts only by adducing evidence of the due execution of the will by Ramdhan and of its attestation. The challenge before us is as to the credibility of the witnesses

who have come forward to say that the document upon which the appellant relies not merely bears the signature of Ramdhan but represents the disposition made by Ramdhan, that is it was executed by Ramdhan, and that the attesting witnesses attested the execution of the will by Ramdhan. In order to judge the credibility of the witnesses, the Court is not confined only to the way in which the witnesses have deposed or to the demeanour of witnesses, but it is open to it to look into the surrounding circumstances as well as the probabilities, so that it may be able to form a correct idea of the trustworthiness of the witnesses. This issue cannot be determined by considering the evidence adduced in the Court separately from the surrounding circumstances which have also been brought out in the evidence, or which appear from the nature and contents of the document itself. We do not understand the observations of Lord Waston to mean that the testimony as to the execution of the document has to be considered independently of the attendant circumstances. All that he says is that where there is a large and consistent body of testimony tending to show the execution of a will by the testator, that evidence should not be lightly set aside on the theory of improbability.

Dealing with the mode of proof of a will, this Court has observed in *H. Venkatachala Iyengar* v. *B. N. Thimmajamma and Others*(1):

> "As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.
>
> However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator, who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testa-

(1) [1959] S.C.R. Supp. 1. 426, 443.

1964

Ramchandra Rambux v. Champabai

Mudholkar J.

ment of the departed testator. Even so, in dealing with the proof of the wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; . . . . the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator."

This Court also pointed out that apart from suspicious circumstances of this kind, where it appears that the propounder has taken a prominent part in the execution of the will which confers substantial benefits on him, that itself is generally treated as a suspicious circumstance attending the execution of the will, and the propounder is required to remove the suspicion by clear and satisfactory evidence. In other words, the propounder must satisfy the conscience of the Court that the document upon which he relies is the last will and testament of the testator.

This decision has been recently referred to in a judgment of this Court in *Shashi Kumar Banerjee and others* v. *Subodh Kumar Banerjee*(1) (Civil Appeal No. 295 of 1960 decided on September 13, 1963). There, Wanchoo J. who spoke for the Court, has observed as follows :

> "The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by s. 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubt it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's

(1) C.A. No. 295 of 1960, D. Sept. 13, 1963 (Non-reportable).

1964

Ramchandra Rambux v. Champabai

Mudholkar J.

mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. It is in the light of these settled principles that we have to consider whether the appellants have succeeded in establishing that the will was duly executed and attested."

In *Sarat Kumari Bibi's* case(1) on which the High Court has relied and which is also relied upon in *Venkatachala Iyengar's* case(2) just cited, it was found that one Jamaluddin who took benefit under the will, had taken an active part in the preparation of the will, and, therefore, the rule made by Lindley and Davey L.JJ. in *Tyrrell* v. *Painton*(3) that where circumstances exist which would excite the suspicion of the Court, the burden is upon the propounder of the will to remove such suspicion and prove affirmatively that the testator knew and approved of the contents of the document, was applied.

The High Court has analysed the entire evidence adduced by the propounder of the will to prove its due execution by Ramdhan, and along with that evidence, it has also considered certain attendant circumstances. One is the fact that the will is said to have been executed at Hyderabad, which is a place where the appellant resides and carries on his profession as a medical practitioner and not at Peepalgaon, where Ramdhan resided. The evidence adduced in the case shows that on the day prior to the one on which the will purports to have been executed, Ramdhan was at Ghanegaon till the afternoon. This place is 8 miles distant from Peepalgaon, and

(1) [1928] L.R. 56 I.A. 62. (2) [1959] Supp. 1, S.C.R. 426, 443.
(3) [1894] P. 151, 157, 159.

the nearest railway station is 20 miles distant from Peepalgaon. The will is said to have been executed at about noon, and though it is not impossible, it is highly improbable that Ramdhan could have been present at the place of execution by that time. The third thing is that the will was executed in the house of the appellant. One of the circumstances is that there was no particular reason why the will should have been executed at that time, because there is no suggestion that Ramdhan was not keeping good health. Then again, the property is very considerable, and instead of employing the services of a trained lawyer to draw up the will, a layman like Venkat Rajaram, who has given his profession as "Jagirdari" had been enlisted. The scribe as well as the attesting witnesses are not the personal friends of Ramdhan, though they say they knew him, but appear to be either the friends or neighbours of the appellant. Yet, the appellant wants the Court to believe that all these persons were collected by Ramdhan after his arrival at Hyderabad on the morning of May 23. This, in itself, would be an improbable thing indeed, because Ramdhan would not have had enough time at his disposal for doing it. Again, there is no explanation why he should collect only the friends and acquaintances of the appellant rather than persons, who were his own friends.

The High Court has further pointed out that the document is inscribed on a flimsy paper. It is in high-flown Urdu, and is alleged to have been dictated by him in that language. No doubt, the evidence indicates that Ramdhan could speak in Urdu, but it also indicates that he cannot read or write in Urdu. It would, therefore, be legitimate to infer that the language which he could speak was the unlettered man's Urdu and not high-flown Urdu, which contains an admixture of Persian words. Indeed, such words have actually been used in this document. The signature of Ramdhan is itself in Modi script, which would not have been the case if he were well-versed in Urdu. When we turn to the reverse of the sheet on which the document is inscribed, we find that as we go lower down, more and more words seem to be crammed in each line and the spacing between two lines tends to decrease, even though there appears to have been plenty of room for the signature of Ramdhan to be scribed lower down

1964

Ramchandra Rambux v. Champabai

Mudholkar J.

on the paper. It would be legitimate to infer from this that the signature was already there before the will was scribed. This feature of the document as well as the quality of the paper used would suggest that a piece of paper bearing Ramdhan's signature has been utilised by the scribe for engrossing what purports to be a will.

Finally, there is the circumstance that the will is unnatural in the sense that though Ramdhan left property worth several lakhs, he made no provision for a residence for his wife but gave her only Rs. 40/- per month as her maintenance, and made only paltry bequests to his daughters. It is true that the daughters are married in affluent families, but in the absence of a male issue, a father is normally expected to give at least substantial bequests to his daughters. Instead, the will gives almost the entire property to a distant relative, who, it may be noticed, was neither brought up by the testator, nor was a person who looked after the testator during his declining years. All this is said to have been due to the fact that Ramdhan's relations with his wife had become strained. Indeed, the relationship between Ramdhan and his wife had become so bad that Ramdhan, according to the appellant, suspected that she was trying to poison him. Curiously enough, in spite of this, Ramdhan continued to live with Sitabai right till his death, and had made no arrangement for a person other than her to take charge of the cash and the gold and silver ornaments of the value of a couple of lakhs of rupees or so, in the event of his dying suddenly. There is nothing to suggest that Ramdhan's food was cooked by any one other than Sitabai.

To prove the appellant's allegations that Ramdhan and Sitabai were not getting on well, the main evidence is that of the appellant himself, who is the person who has obviously taken an active part in procuring the execution of the document which he has set up as the will of Ramdhan. He must be held to have taken an active part, even though, according to him, he did not do so, because the will was written not only at Hyderabad where he lives and carries on his profession but also in his own house, and the persons who played one part or the other in this connection are either his friends or his neighbours. It is these circumstances which have to be borne in mind while evaluating the testimony of the witnesses bear-

ing on the execution of the will. Further, it is necessary for the appellant to satisfy the conscience of the Court about the genuineness of this will by removing all suspicions which naturally flow from the various circumstances, which we have set out above. There is not an iota of evidence in this regard, and we are not satisfied that the suspicion created by the circumstances referred to by us has been removed. Learned counsel has taken us through the evidence of the appellant, the scribe and three attesting witnesses examined by him. All this evidence has been critically examined by the High Court but for reasons given by it in its judgment, not accepted by it. We find no reasons for viewing the evidence differently.

We have already adverted to the fact that no particular reason has been even indicated by the appellant as to why Ramdhan thought of executing a will long before his death. If his idea in doing so was to make certain that his property does not fall in Sitabai's hands after his death one would have expected him to make some arrangement for keeping the movables out of her reach. He, however, made no such arrangement. Further, he would have also taken the precaution of registering the will, so that any challenge to its genuineness could not have been successfully made.

Furtner, there is no unimpeachable evidence to show that the will was brought to light immediately after Ramdhan's death, which would have been the case if it were a genuine will. On the other hand, there is one circumstance which suggests that the claim on the basis of Ramdhan's will was not even thought of by the appellant till long after Ramdhan's death. The circumstance is the continuance of Sitabai in possession of the cash, gold and silver articles and other movables, even subsequent to Ramdhan's death. Of course, the appellant has given the explanation that he allowed her to remain in possession on his behalf, but his evidence is wholly incredible. Indeed, the appellant has said that he instituted the suit because he found Sitabai parting with portions of Ramdhan's movables in favour of her daughters and strangers after the death of Ramdhan. At least, one thing will follow from this that according to him Sitabai was more interested in her daughters than in him. If, therefore, he had a genuine claim to Ramdhan's property, he would not have

1964

Ramchandra Rambux v. Champabai

Mudholkar J.

allowed Sitabai to remain in possession of Ramdhan's movables. At least, he would have obtained from her a document containing the list and description of the movables and also an admission to the effect that she was entrusted with them by the appellant and that she had no right in them. Had she refused to execute such a document, one would have naturally expected the appellant to institute a suit for their possession immediately. There is no explanation for the absence of such a document, and thus this is also a circumstance which militates against the genuineness of the will.

In the circumstances, we hold that the High Court was right in rejecting the evidence of the attesting witnesses and the scribe as well as of the appellant with regard to the execution of the will by Ramdhan.

We accordingly uphold the judgment of the High Court, and dismiss the appeal with costs.

Appeal dismissed.

1964

February 19.

K. S. RASHID & SONS AND ANOTHER

v.

COMMISSIONER OF INCOME-TAX, U.P. AND OTHERS

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Income-tax—Proceedings under s. 34(1A)—Applicability of other relevant provisions of the Act—Section 34(1A) whether contravenes Art. 14 of the Constitution—Indian Income-tax Act, 1922 (11 of 1922), ss. 34(1), 34(1A)—Constitution of India, Art. 14.

The validity of s. 34(1A) of the Income-tax Act was challenged by the assessees as contravening Art. 14 of the Constitution. It was contended, that the remedy by way of appeals and revisions available in cases under s. 34(1) was denied to the assessees against whom proceedings were taken under s. 34(1A), and that while under s. 34(1)(a), as it then stood, the assessing authority could not act beyond 8 years, this protection was not available to assessees against whom action was taken under s. 34(1A).