BHAGWANI KUER (DEAD) & ORS. A

v.

TAPESWARI KUER (DEAD) & ORS.

August 20, 1973

[K. K. MATHEW AND M. H. BEG, JJ.]

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Indian Succession Act, Sec. 141 : *"Manifests an intention to act as executor" —What facts constitute manifestation—Legacy conferred on the executor of a will.*

A made a will giving life interest in his properties to three daughters-in-law. After the death of the three ladies, half share of the property was to go to two daughters of one of the daughters-in-law and the other half to one S, collaterally related to A. S was appointed as one of the executors of the will. C One of the terms of the will was "that on the death of me, executant, the aforesaid executors, should perform the Shradh ceremonies of the executant according to the means and customs in the family." S performed the cremation ceremonies and helped the two daughters-in-law to manage properties. There was no evidence to show that he performed the Shradh as well. S died before the will was duly proved. The principal question in the suit filed by the heirs of S was whether there was adequate manifestation of an intention to act as an executor on the part of S. The two lower Courts held that the intention to act as an executor was apparent from the facts while the High D Court held that, since there was no evidence of Shradh being performed by S there was no 'manifestation', as required by Sec. 141 of the Indian Succession Act.

Dismissing the appeal.

HELD : There is a distinction between the cremation ceremonies and shradh ceremonies which are periodic. It is also evident that what the testator desired his executors to do was that they should perform his shradh ceremonies. E The manner in which the testator has referred to S in his will, almost as a substitute for a son, shows that he expected S to perform his shradh ceremonies as his own sons, who had pre-deceased him, would have preformed these. There is no evidence whatsoever on record that S ever performed any such ceremony. The conclusion reached by the High Court, therefore, is correct. [433 C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1743 F of 1967.

Appeal by Special Leave from the judgment and Decree dated 15th October, 1958 of the Patna High Court in Appeal from Appellate Decree No. 552 of 1953.

V. S. Desai and *D. Goburdhan*, for the appellants.

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Sarjoo Prasad, R. K. Jain and E.C. Agarwal, for respondents Nos. 2 to 12.

The Judgment of the Court was delivered by

BEG, J. In this appeal by special leave the short question involved relates to an application of Sec. 141 of the Indian Succession Act to the facts of the case. This section reads as follows : H

> "141. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy,

A unless he proves the will or otherwise manifests an intention to act as executor".

"Illustration :

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the B will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor".

The plaintiffs-appellants before us claim as the heirs of Sham Narain Singh who died issueless in August 1913. One Achhaiber Singh, a collateral of Shyam Narain Singh, had made a will on 3rd C July, 1912, under which he gave life interests in the properties owned by him to his three daughters-in-law Deolagan Kuer, Chapkali Kuer, and Alodhan Kuer. He laid down that, after the death of these three ladies, a half share in the properties would go to the two daughters of Alodhan Kuer, and another half to the above mentioned Shyam Narain Singh, a grandson of the testator's first cousin. Achhaiber Singh died in November, 1912. It was found by all the Courts that Shyam Narain D Sing took part in the cremation ceremony of Achhaiber Singh. Apparently, the members of the family in which Achhaiber Singh had been adopted were not well disposed towards him. It was, therefore, not surprising that Shyam Narain Singh, with whom he was well pleased, should light the funeral pyre as his agnate in the absence of his sons who had predeceased him. It has also been found that Chapkali Kuer and Alodhan Kuer had applied for the probate of the will of Achhaiber E Singh after the death of Shyam Narain Singh. Hence, Shyam Narain Singh could not possibly join them at that time. He had died before the will could be duly proved. He was also said to have looked after the properties of the two ladies. The question before us is whether by taking part in cremation ceremonies and by helping two daughters-in-law to manage properties, Shyam Narain Singh manifested his intention to act as an executor so as to be covered by Sec. 141 of the F Indian Succession Act, and, therefore, to claim his legacy.

We may mention here that there was some previous litigation also between the parties. In suit No. 144 of 1946, brought by the heirs of Shyam Narain Singh, against some of the defendants in the suit before us, the precise question before us for decision had arisen, but the High Court had not decided it. It had dismissed the suit on the G ground that the plaintiffs had not *locus standi*. On the strength of that decision the bar of *res-judicata* is relied upon by the Defendants-Respondents before us as it was in the Courts below. But, as this appeal can be disposed of on the first question, already mentioned by us, relating to the application of section 141 Indian Succession Act. we need not deal with the plea of *res-judicata*.

H The suit before us was filed by the heirs of Shyam Narain Singh for a declaration of the rights of Shyam Narain Singh in the property bequeathed, and for a declaration that the compromise decree in suit No. 74 of 1944 was fraudulent, collusive, invalid, and not binding upon

the plaintiffs. The Trial Court and then the Additional District Judge of Patna, on the first appeal of the Defendants-Respondents before us, had decreed the plaintiffs' suit. The Additional District Judge had held that, by taking part in the cremation ceremonies and by helping the two legatees daughters-in-law of the testator, Shyam Narain Singh had manifested an intention to act as an executor before he died. The Additional District Judge had also taken into account the fact that the heirs of Shyam Narain Singh had taken some interest in the properties left by Achhaiber Singh by litigating for it. He thought that this was only possible if Shyam Narain Singh had himself manifested an interest in his rights under the will. This evidence was considered sufficient for holding that Shyam Narain Singh had manifested an intention to act as executor.

The High Court of Patna had allowed the second appeal of defendants on the ground that the findings of fact recorded by Courts below were not enough to attract the application of Section 141 of the Indian Succession Act. The conduct of the relations of Shyam Narain Singh, in litigating for the property left by Achhaiber Singh was, as the High Court rightly pointed out, not relevant for determining the intentions of Shyam Narain Singh. Nor was the fact that he looked after the proprieties of the two co-legatees, who were widows, a manifestation of his own intention to assert his own rights as an executor. What was most important was the provision in the will itself which had been overlooked by the first two courts. Achhaiber Singh had laid down in the will: "That on the death of me, the executant, the aforesaid executors, should perform the Shradh ceremonies of me, the executant according to the means and custom in the family". The High Court had accepted the contention that there was no evidence that Shyam Narain Singh had performed Shradh ceremonies of Achhaiber Singh in accordance with "the means and the custom in the family".

The only contention which could be advanced before us on behalf of the plaintiffs-appellants was that cremation ceremonies do not end with actual cremation of the testator, but include other ceremonies such as Sraddha ceremonies which come later. In reply, we have been referred to the meaning of the term "Sraddha" given in Sir M. Monier-Williams' Sanskrit-English Dictionary (p. 1097) as follows:

> "....a ceremony in honour and for the benefit of dead relatives observed with great strictness at various fixed periods and on occasions of rejoicing as well as mourning by the surviving relatives (these ceremonies are performed by the daily offering of water and on stated occasions by the offering of Pindas or balls of rice and meal to three paternal and three maternal forefathers, i.e. to father, grand-father, and great grandfather, it should be borne in mind that a Sraddha is not a funeral ceremony (antyeshti) but a supplement to such a ceremony; it is an act of reverential homage to a deceased person performed by relatives, and is moreover supposed to supply the dead with strengthening nutriment after the performance of the previous funeral ceremonies has endowed

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them with ethereal bodies; indeed until those antyeshti or 'funeral rites' have been performed, and until the succeeding first Sraddha has been celebrated the deceased relative is a prata or restless, wandering ghost, and has no real body (only a lingrasarira, q.v.); it is not until the first Sraddha has taken place that he attains a position among the Pitris or Divine Fathers in their blissful abode called Pitri-loka, and the Sro is most desirable and efficacious when performed by a son;"

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Thus, it is clear that there is a distinction between cremation ceremonies and Sraddha ceremonies which are periodic. It is also evident that what the testator desired his executors to do was that they should perform his Sraddha ceremonies. The manner in which he refers to Shyam Narain Singh in his will, almost as a substitute for a son, shows

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that he expected Shyam Narain Singh to perform his Sraddha ceremonies as his own sons had predeceased him. There is no evidence whatsoever on record that Shyam Narain Singh ever performed any such ceremony. The conclusion reached by the High Court is, therefore, correct.

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Accordingly, we dismiss this appeal with costs.

There is also a Civil Miscellaneous Petition No. 4146 of 1968 before us for an amendment of the plaint in case we order a remand of the case. We see no reason to allow this application which is also dismissed.

Appeal dismissed.

S.B.W.