Privy Council Appeal No. 96 of 1914.

Suna Ana Arunachellam Chetty and Others - *Appellants,*

v.

S. R. M. Ramaswami Chetty - - - - *Respondent,*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST FEBRUARY, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* THE LORD CHANCELLOR.]

Two questions are raised in this appeal: the one is whether the appeal is competent to the appellants, and the other whether a will, which was executed on the 10th November, 1904, by one Subramanian Chetty, is or is not a good and valid testamentary document.

With regard to the first point, their Lordships desire to express no opinion. In the view that they take of this case its decision is not material, and their opinion must not be taken to involve an assumption that the appellants have a sufficient interest to enable them to maintain the appeal.

With regard to the other question, it is clear that the judgment of the Judge of the District Court, which was in the appellants' favour, can only be supported if the evidence of a doctor, Dr. Van Allen, be disqualified, because either it is untrustworthy owing to faulty recollection, or, if accepted, does not go far enough to establish the validity of the will. If, therefore, their Lordships considered the doctor's evidence accurate and adequate, it would be unavailing for counsel to ask the Board to examine the detailed story of the other witnesses who were called before the District Court.

Their Lordships have given careful and close attention to the evidence of Dr. Van Allen, and are clearly of opinion that

reliance can safely be placed on it in all material respects, and that it does fully and sufficiently establish the validity of the will that is in dispute.

From this evidence it appears that the deceased was operated on by Dr. Van Allen on the 9th November, 1904, in the American Hospital at Madura. He was operated on for a carbuncle, but he was, and he had for some time past to the doctor's knowledge been, suffering from diabetes. On the day following the operation the doctor observed from certain symptoms that there was a prospect of the patient sinking under the shock. He accordingly, at noon on the 10th November, told him or his friends that he had better see to his affairs, and accordingly vakils were called in, who prepared the document which is in dispute. The doctor says that he saw the will signed by the testator. He says that he was with him for half an hour, during which he signed and he (the doctor) attested. The doctor also saw a man taking notes, apparently at the dictation of the testator, though he did not hear what passed between them, and at 9 or 10 in the evening, after the signature of the document, the deceased left the hospital in a state of great weakness, and within a few hours died.

Now the doctor's evidence is quite clear that, in his opinion, the deceased was perfectly capable of understanding a business transaction, and understood what he was doing at the time when he executed the will. He gives several reasons, the chief of which, repeated from time to time, is that he could tell by the appearance of the face and eyes of the patient; this appears to have been regarded as unsatisfactory by the District Judge, who thought that it was not a means by which the doctor could ascertain the strength and intelligence that was left to the dying man.

Their Lordships are quite unable to accept the view of the learned Judge in this matter. There are many signs by which a doctor can determine whether a man's mind is sound or no, and certainly not the least important is the character and appearance of the man's eyes and expression.

But the matter does not rest there, because the doctor says himself that he was talking to the patient throughout the day trying to cheer him up, though whether he spoke to him at the moment when his will was executed or immediately afterwards is not made plain.

Their Lordships think that the real fact that explains the judgment of the District Judge is this: When the will is examined it appears that the last page has the writing inconveniently crowded above the signature of the testator, and the last page but one has also at the foot of the page writing so placed as to lend colour to the suggestion that the page had been filled up after the signature had been attached. It goes no further than that; but upon that it appears that the learned Judge has built up a theory of a dishonest conspiracy with regard to the preparation of this will,

which their Lordships are clear Dr. Van Allen's evidence completely destroys. If the view were right that this will had been written on blank pages over signatures of the testator previously obtained, it would have been quite impossible for Dr. Van Allen to have said, as he did again and again, that he saw the deceased execute the will, and it would have been equally impossible for Dr. Van Allen to have attested on the last page of the will the signature of the deceased without noticing that there was no writing whatever over it. Remembering his responsibilities, as he clearly did, as an attesting witness, he would have been quite unable, if the paper was blank, to have come and said, in the plain words which he used, that he saw the signature of the deceased attached to this document.

These are the reasons that convince their Lordships that, whatever may be the true cause of the inconvenient way in which some of this writing appears, the explanation is not and cannot be the one that the learned Judge has assigned ; it would indeed be most unsafe and most undesirable in circumstances such as these to try to spell out from the peculiar form in which a document written in the vernacular appears a hypothetical answer to the clear, distinct, and trustworthy evidence of the doctor who witnessed the will.

Their Lordships only desire to add, in conclusion, this: When a will has once been made and is apparently in perfect form, and the evidence of the attesting witness is to be trusted, few things can be more dangerous than to attempt to recreate the kind of will that the man ought, in the opinion of the Court, to have made. Once the man's mind is free and clear and is capable of disposing of his property, the way in which it is to be disposed of rests with him, and it is not for any Court to try and discover whether a will could not have been made more consonant either with reason or with justice.

Their Lordships see no reason whatever to doubt that the view that has been taken by the High Court of Judicature at Madras is correct, and they will humbly advise His Majesty that this appeal be dismissed with costs.

In the Privy Council.

SUNA ANA ARUNACHELLAM CHETTY AND OTHERS

v.

S. R. M. RAMASWAMI CHETTY.

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THE LORD CHANCELLOR.

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