

Privy Council Appeal No. 108 of 1918.
Allahabad Appeal No. 4 of 1916.

Bindeshri Prasad and another - - - - - *Appellants*

v.

Musammat Baisakha Bibi and others - - - - - *Respondents*

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 7TH NOVEMBER, 1919.**

Present at the Hearing :

LORD ATKINSON.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

The litigation which has given rise to this appeal relates to the property of one Ram Narain, a Hindu inhabitant of Chunar belonging to the Agarwala caste, who is stated to have died at Mirzapore on the 30th November, 1912, under circumstances to which reference will be made later. Ram Narain had a brother named Lachmi Narain, who had predeceased him, on the 25th October, 1911, leaving three sons who are plaintiffs in this suit and appellants before the Board. Ram Narain on his death left him surviving, besides his nephews (the brother's sons), a niece (a sister's daughter) and her three sons, all of whom are defendants to the action and respondents on the appeal. It is also in evidence that one of the sons of Ram Narain's sister is still alive.

As already indicated, the contest is between the nephews of Ram Narain on one side and his sister's daughter and her three sons on the other.

After Ram Narain's death there were certain mutation proceedings in the Revenue Courts, and Baisakha, the niece, succeeded in obtaining an order for the registration of her name in the Revenue Register on the strength of a will alleged to have been executed in her favour by Ram Narain two or three days before his death. The plaintiffs (the nephews) thereupon brought the present action to have it declared that the will was a forgery and that Ram Narain died intestate without making any disposition of his property and that consequently they, as his nearest male reversioners, are entitled to the succession to his estate. The defendants alleged that the impugned document was genuine and duly executed by Ram Narain. On the facts of the case, therefore, the real issue to be tried was the factum of the will. The Trial Judge held against its genuineness and decreed the plaintiffs' claim. The High Court on the defendants' appeal came to a different conclusion, and accordingly reversed the Trial Judge's decree and dismissed the suit. Hence the appeal by the plaintiffs to His Majesty in Council.

It has been contended on their behalf that as their right as the legal heirs of Ram Narain is indisputable, the onus of establishing without reasonable doubt, that the will propounded is the will of Ram Narain, rests on the defendants. Before entering upon a consideration of this question, it is necessary to mention a few preliminary facts. The two brothers, Lachmi Narain and Ram Narain, who were subject to the Mitakshara Law, entered into a partition in 1866, when the village of Sheopur fell to Ram Narain and it was subsequently entered in his name in the Revenue Register. At the time of Lachmi Narain's death, he and Ram Narain were living in separate houses though in the same town, viz., Chunar. It is alleged by the plaintiffs that on his death-bed Lachmi Narain besought his brother to take charge of his sons, who were still young and inexperienced, and that Ram Narain consented. In order to carry out faithfully the charge entrusted to him, he, it is further alleged, without abandoning his own house, came to reside in Lachmi Narain's house, and had most of his work done by his nephews' gomashtas, and his accounts kept in the same books. These allegations are supported by a number of witnesses who appear to be respectable people. But over and above that, the plaintiffs have produced their account books, the genuineness of which does not seem to have been challenged, which show receipts and disbursements on account of Ram Narain. Upon these facts the plaintiffs had put forward a legal contention of reunion, but it was abandoned at a very early stage of the trial. It is to be observed that the defendants, who took possession of Ram Narain's house and effects on the night of the 30th November or early the following morning, immediately after his death and cremation, have not produced a single account book of his to contradict the plaintiffs' story. Nor have they called Jogeshwar, who they allege was doing Ram Narain's work in his own house. The evidence they have called to rebut the inference from the above facts, that until Ram Narain left

Chunar on the 15th November he was on good terms with his nephews, will be referred to later.

It is to be mentioned that Baisakha with her sons ordinarily resided with her husband in his house at Mirzapore, where he had a place of business. Occasionally she came to Ram Narain at Chunar. In November, Radha Kishen, one of the sons of Baisakha, was staying with his wife at Ram Narain's house; evidently he had been there some time before. There is no doubt, in fact it is not disputed, that at the time of the alleged execution of the will and his death, two days later, Bhawani Pershad, Baisakha, her eldest son Jiwan Das, a young man of 28 years, and a younger son, Madho Pershad, were in their house at Mirzapore the whole of the time. Only Radha Kishen, the second son, was, as already stated, at Chunar. At the time he was examined in Court, he gave his age as 21; he could thus have been only 19 when the events under consideration took place. It is material to bear in mind the age of this youth in connection with another feature in the case.

On the 15th November, Ram Narain left Chunar for Allahabad. There is an entry in the books of account produced by the plaintiffs of a payment of Rs. 100 to Ram Narain on that date in the following terms:—

“Debited to Babu Ram Narainji Katik Sudi 6th paid in cash through self when going to Allahabad for purchasing tin, &c., and a gate . . . Rs. 100.”

The oral evidence is to the same effect. Narsingh Das, one of the nephews, who kept the cash, says as follows:—

“Before his death, Babu Ram Narayan went to Allahabad to purchase tin and iron gate. He went there in November, 1912; at the time of his going he took Rs. 100 from me. The cash used to be kept with me.”

There is no challenge of the entry in the cross-examination of this witness or of the fact that Ram Narain took the money for the purpose stated. Radha Kishen, however, states that Ram Narain had told him before starting that “he was going to Mirzapore for some Court-work.” There is no suggestion anywhere or by any other witness that Ram Narain had any “Court-work” in Mirzapore, or that he went there to transact it. In fact, it is admitted on the defendants' side that Ram Narain went first to Allahabad and came to Mirzapore from there. The statement of Radha Kishen appears to have been made with the object of accounting for Ram Narain's presence at Mirzapore.

There is absolutely no evidence regarding Ram Narain's movements in Allahabad; where he lodged, whom he saw, or on what date he arrived at Mirzapore. The next he is heard of is on the 27th November, in relation to the will in question. On that date a petition purporting to be signed by Ram Narain “by the pen of Bhowani Parsad” was presented to the Sub-Registrar to attend at his residence to register a will. The petition is as follows:—

“Application of Ram Narayan Agarwala, resident of muhalla Gangeswar Mahadeo in Chunaragarh, at present residing at muhalla Purana

Bazzaza in the city of Mirzapur, through Babu Bhawani Parshad, Agarwala, his son-in-law.

“ The petitioner begs to state as follows :—

“ The petitioner has made a will in favour of Baisakha Bibi, his sister's daughter, and the sons of his sister's daughter and he wishes to get it registered. But on account of old age and illness, he cannot attend the registration office and get it registered. He, therefore, files this application and prays that it may be registered by commission at the house of Babu Bhawani Parshad, Agarwala, in muhalla Purana Bazzaza in the city of Mirzapur.

“ Dated the 27th November, 1912.

“ Written by Parmeshri Parshad, clerk.

“ Signature of Babu Ram Narayan by the pen of Bhawani Parshad.

“ Filed by Munshi Jugal Lal, mukhtar.”

The reasons given for his non-attendance at the Sub-Registrar's office are “ old age and illness.” Ram Narain was in perfect good health when he left Chunar. This fact Radha Kishen admits in his evidence. A consideration of the evidence of the only two witnesses to the will who have been examined in the case, and who affixed to it their signatures on the 27th, shows that the statement in the petition about Ram Narain being ill may have been a mere stratagem to avoid personal attendance and getting the Sub-Registrar to come to the house.

Sital Pershad, one of the above-mentioned witnesses, states in cross-examination :—

“ His (Ram Narain's) hand did not shake at the time of affixing his signature. He affixed his signature like a healthy man. . . . Ram Narain did not appear to be ill.”

Thakur Prasad, the other witness, says :

“ Ram Narain did not appear to be at all ill on that day. He greeted me from the cot while sitting. When I went in I asked him how he was doing. He told me he was suffering from cough.”

On that day, according to these witnesses, he was perfectly well, barring a cough. He died on the 30th. If Ram Narain became so ill in the intervening two days as to cause his death on the 30th, it is unnatural and improbable to suppose that no medical man should be called in, and that he should be allowed to die totally neglected without medical advice. The condition of Ram Narain when he came to the house of Bhawani Parshad and Baisakha, the nature of his illness, and the circumstances connected with his death are all enshrouded in mystery. The three adult people who could have given evidence as to the cause of his death, viz., Bhawani Parsad, Jiwan Dass and Baisakha, have not been called as witnesses. The will bears date the 27th November; it purports to be written by one Parmashri Prasad alias Babu Lall, “ resident of Mahalla Wellesleyganj, city Mirzapore,” and bears the signatures of four witnesses, Sital Prasad Agarwala, Sri Chand Agarwala, Thakur Prasad Misra and Jagarnath Khatel. The document was written in the Urdu language in Persian character and begins with the usual preliminary :—

“ I have become old and life is uncertain, and I do not know at what moment I shall breathe my last; and I have no issue.”

It then proceeds to declare as follows :—

“Musammat Baisakha Bibi, wife of Babu Bhawani Prasad, Agarwala, resident of Muhalla Purani Bazazi, city Mirzapur, is my own niece, *i.e.*, sister's daughter); she used to live jointly with me; I have brought her up as my own daughter and have celebrated her marriage, and she often stays at my house and renders me obedience and service. Once I fell ill, and during that illness of mine she nursed me in a manner in which perhaps my own daughter would not have nursed me. So I, the executant, am very much pleased with her.”

Then after describing the partition between Lachmi Narain and Ram Narain in 1866, the devise to Baisakha is in the following terms :—

“For the perpetuation of my name and continuance of the family and for benefit in the next world, it is necessary to make proper arrangements. Hence I, the executant, while in full possession of my faculties and five senses, have, of my own free will and accord and without coercion or compulsion, executed this will in respect of the properties specified below in favour of my niece, Musammat Baisakha Bibi, wife of Babu Bhawani Prasad, Agarwala, and my grandsons (*i.e.*, ‘nawasgan’) Babu Jiwan Das *alias* Nanku, Babu Radha Krishna and Babu Mahadeo Prasad, sons of Babu Bhawani Prasad, Agarwala, residents of muhalla Purani Bazazi, city Mirzapur, and have made the following conditions binding.”

The first condition is that the testator should remain in possession of his entire property during his lifetime. (As Ram Narain, if he made this will, died two days after, the provision is not of much consequence.) He provides that Baisakha should come into possession after his death. The second condition is that on her decease her sons should take the entire property as absolute owners. The third condition runs thus :—

“After my death, my funeral ceremonies should be performed by my grandsons according to the custom and usage of my family. But my nephews (*i.e.*, brother's sons) and others shall not touch my corpse. They are strictly prohibited from doing so.”

Then there are some minor legacies left to a Musselman woman named Amirjan who is said to have been in his keeping. The rest is unimportant. Then come the details of the properties which consist of the village of Sheopur, a godown, a bungalow and a house all in Chunar.

On the morning of the 28th, between 10 and 11, the Sub-Registrar, pursuant to the petition of the previous day, presented by Bhowani Prasad, came to his house. He says he was taken inside, where he found a man sitting on a cot or chair, he does not remember which, who was identified to him as Ram Narain by two men, one Mahadeo Prasad, the other Bisheshar Malviya. This man Bisheshar died after the mutation proceedings, but his deposition in the Revenue Court has been put in in this case. The Sub-Registrar of course did not know Ram Narain, nor did he know Bisheshar, but he knew Mahadeo Prasad, who had worked as an extra clerk in his office. He says that the man identified to him as Ram Narain appeared to him ill. He asked him the usual questions, and on receiving

what he considered satisfactory answers, registered the document tendered to him for that purpose. It is said that the original will was made over from the Registrar's office to Bhowani Prasad under instructions given by Ram Narain, that Bhowani Prasad entrusted it to Radha Kishen and that Radha Kishen lost it in the course of a railway journey from Mirzapore. To these facts reference will be made later. As the document is said to be lost, a certified copy has been put in in evidence. The Registration endorsement on this copy is as follows :—

“Babu Ram Narayan, son of Ganga Prasad, caste Agarwala, by occupation a zamindar, at present residing at Purani Bazazi, city Mirzapur, presented this document himself at his residence, where I, the Sub-Registrar, have come myself to-day, the 28th November, 1912, between the hours of 10 and 11.

“ (Sd.) Mahmud Hasan, Sub-Registrar.

“ (Sd.) Babu Ram Narayana in autograph.

“The execution and completion of this document were admitted by Babu Ram Narayan aforesaid. The executant was identified by Mahadeo Prasad, son of Beni Prasad, caste Kayasth, occupation service, resident of Kachwa, taluka Chunar, and by Bisheshar Malviya, son of Debi Prasad Malviya, caste Brahman, occupation receiving rent of houses, resident of Dhundikatra, city Mirzapur. The executant was told about the word struck out and the word written above the line and he admitted the same. Mahadeo Prasad witness, is known to me personally. The executant is ill, and his real place of residence is said to be in Chunar.

“ (Sd.) Babu Ram Narayan, in autograph thumb impression.

“ (Sd.) Mahadeo Prasad, Kayasth, in autograph.

“ (Sd.) Bisheshar Malviya in autograph.”

The Sub-Registrar did not know Bhowani Prasad at the time, but only came to know him since the mutation proceedings.

The copy appears to have been received by Bhowani Prasad on the 2nd December ; and Radha Kishen in his evidence deposes that Bhowani Prasad, his father, made it over to him on the day following, viz., the 3rd December. He states further that on the 11th he took the will with him from Chunar to Mirzapore as Babu Bindeshri Prasad, one of the plaintiffs, had made an application for mutation, and he brought the will to have a draft prepared for a petition of objection. The rest of his statement had better be given in his own words :—

“I had a draft prepared. On the 11th December, 1912, I returned to Chunar from Mirzapur by the 9 o'clock night train. I took the will with me. I do not know how it got lost on the way. There was a 'basta' (bundle) of papers in which were two leaves of foolscap paper, two stamps of the value of eight annas each, and the draft petition of objection and the will. The whole bundle got lost. In the morning when I got up after sleep, my brother, Jiwan Das, said to me, 'Where is the will? Keep it safely.' I had taken with me one more bundle from Mirzapur, containing clothes, etc., to be given to the Brahmans in consequence of Ram Narain's death. I had taken this bundle to the house and kept it at the place where I slept. In the morning I looked and found that the bundle of clothes was there, but not the 'basta' (bundle of papers) containing the will. On the 12th December, 1912, I came to Mirzapur by 9 o'clock motor (train), and went to the house of Munshi Bhagwan Prasad, pleader. I brought my

father also with me. I told him (Bhagwan Prasad) everything. Munshi Bhagwan Prasad told me to present an application to the Collector. He prepared a draft for the application. I had it faired out by a clerk and sent it to the Collector under a registered cover."

It is to be observed that in his petition to the Magistrate of the 12th December reporting the loss of the document, he gives a totally different reason for his visit to Mirzapore on the 11th December. He says as follows :—

"In connection with the funeral ceremonies of the deceased the petitioner had to visit Mirzapur and Chunar to collect requisites and (necessary) articles, etc., and he used to keep with him the 'basta' (bundle of papers) containing the will also. The petitioner does not know where he lost the said 'basta' (bundle), whether on the way or in the railway. The petitioner did not miss it at all. To-day the petitioner on being asked by his brother Jiwan Das to let him have the will, searched for it, but did not find it."

He admits that he gave no information, as is invariably the course taken in such cases, either at the Police Station or at the Tahsil office, regarding the loss of the papers. The application which was sent to the Collector on the 12th appears to have reached that officer on the 16th, and he directed an enquiry by the police. The report of the police has been put in in evidence, and shows that the police officer who conducted the enquiry had considerable suspicion about the bona fides of the alleged loss. There is no other evidence as to the fact that the will was lost by Radha Kishen under the circumstances described by him, and his statements stand absolutely uncorroborated. The pleader Bhagwan Prasad, who is said to have been consulted as to the steps to be taken with regard to notifying the loss to the authorities has not been examined; nor has Bhowani Prasad the father who is said to have accompanied Radha Kishen given his evidence. The case as to the alleged loss rests on the sole, solitary evidence of Radha Kishen. The plaintiffs' case is that the document was deliberately destroyed or lost with the object of evading a comparison of the signature of Ram Narain on the alleged will and his genuine signatures.

Out of the four witnesses to the will, Ishri Chand and Jagannath have not been examined. No reason has been assigned to explain why they were not called. Parmeshri Prasad, the writer of the will as also of the petition of the 27th November, also has not been examined. He could have told us how this disputed document came into existence. He could have stated whether the will was copied from a draft, or whether it was dictated by Ram Narain offhand, and what his condition was at the time when he dictated it. Radha Kishen, the only member of the family who has deposed in the case, was at the time in Chunar, and he had no knowledge of the fact that Ram Narain was ill or of his subsequent death, or of the fact of his executing a will until the family, consisting of his father, mother and the two other sons Jiwan and Madho Prasad, arrived at Chunar after cremating the body of Ram Narain. He naturally knows nothing

of the circumstances connected with the will or of its genesis. No person has been called to state that Ram Narain at any time previous to the execution of this document ever gave expression to an intention of bequeathing his property to his niece and grand-nephews. It is natural to suppose that if he had any such intention, he would have consulted some pleader at Allahabad or at Mirzapore. The genesis of this document is enveloped in mystery, and the people who could have explained all the circumstances and who have benefited under it have not been called as witnesses.

The story of its execution and attestation, therefore, depends entirely on the statements of Sital Prasad and Tahakurdas coupled with the evidence of the Sub-Registrar so far as it goes. Some additional support is derived from the statements of the Patwari Jagdamba and of Bisheshur, one of the identifiers of the alleged executant before the Sub-Registrar. Sital Prasad states that a servant of Bhowani Prasad came to call him, that when he went there Babu Ram Narain told him that he had executed a will in respect of his property, and asked him to witness the same. He goes on then to say :—

“ I told him very well, then he took out a paper written in Persian character and gave it to me ; I asked him where his signature was and he replied I am affixing my signature. He affixed his signature in my presence, then I witnessed it.”

In cross-examination he states that Bhowani Prasad's sons were there at the time, that Ram Narain sat on a bedstead and that Bhowani Prasad and his sons were standing by him. He states further that he does not know Urdu, and that the will was in Urdu. His statement regarding the condition of Ram Narain at the time has already been referred to. In further cross-examination he says :—

“ No one else was sent for so long as I was there, and at the time I went there to witness the document I did not know how long it was that Ram Narain had been at Bhowani Prasad's place . . . I do not know at what time Ram Narain died. He died a few days after I had witnessed the document.”

This man admits that he is a gomashta of the firm styled Jeth Mal Lachmi Narain, to whom admittedly Bhowani Prasad is indebted, and with whom Bhowani Prasad has had dealings for a long period of time. Thakur Prasad is a gomashta of Ghasi Ram Khattri. His evidence in chief is meagre. He only states that he went to Bhowani Prasad's house, saw Ram Narain, who told him :—

“ I have executed a will in favour of my sister's daughter and her sons. Please sign it. I asked him whether he had affixed his signature to it. He stated that he had done so, and that two other witnesses also had signed it. I saw Ram Narain's signature and the signatures of two witnesses thereon. I saw the signature of Sital Prasad and Sri Chand, then I witnessed it.”

In cross-examination it is elicited from him that his master and Bhowani Prasad have had dealings with each other for many years ; that he was on his way to his master's shop about seven in the morning ; that Bhowani Prasad who was sitting in

his shop saw him and called him in; that Bhowani Prasad told him Ram Narain wanted him. He went in. He did not ask Bhowani Prasad why Ram Narain wanted him. He asked him where Ram Narain was. Bhowani Prasad told him that Ram Narain was inside the house, evidently meaning the female apartments. Then he adds, "I did not ever do any other work of Ram Narain." Such is the character of the evidence as to the attestation of the will. Reference should be made here to Jagdamba Prasad. He is a Patwari of Mauza Sheopur which belonged to Ram Narain. Jagdamba's business consisted in noting down in certain *siahas* (loosely-tied country-made village account books) such collections from the tenants as were dictated to him by Ram Narain. His evidence is that some days before he reported the death of Ram Narain to the Revenue Authorities, he had seen the alleged will which had been brought to him by Radha Kishen; that he had read a portion of it and had seen the signature of Babu Ram Narain on it which he knew. The document as already stated is in the Urdu language in the Persian character, and his statement that he read a portion of the will was put to test by the Trial Judge. An application in the Urdu language was given to him to read. The Subordinate Judge notes in the witness's deposition that he could read only the following words "in the Court of the Sessions Judge"—that is, not more than those words. His story that he had read a portion of the will is palpably false. He admits that he did not make the death report (although he knew about the death on the 2nd December) until after he had seen Baisakha on the 14th December in her house, apparently the house of Ram Narain of which they had taken possession. He states that nobody else made any collections in Sheopur except Ram Narain, but he admits that he does not know that what Ram Narain dictated to him represented the entire collections of the Mauza. In this he does not seem to be speaking the truth. As regards the evidence of the Sub-Registrar, analysed carefully it does not amount to much more than this: that he arrived at the house of Bhowani Prasad, saw a man either sitting on a chair or lying on a cot who was identified to him as Ram Narain and who appeared to him to be ill; that he asked this man whether he had executed the will, and he then proceeded to register the document as already stated. The rest of his evidence is entirely from his book. He does not remember any of the details beyond what is recorded in his register. He relied upon the identification of the two men Madho Prasad and Bisheshur that the man who executed the document was the real Ram Narain. But he makes one significant statement which is worth noting, viz., that there may have been four or five other men in the room at the time. It might be possible in these circumstances to lead the Sub-Registrar astray as to the person to be identified. Madho Prasad was the only man whom the Sub-Registrar knew. He has not been examined nor has any reason been given why he was not called. Bisheshur, a servant of Bhowani Prasad, gave

himself out to the Sub-Registrar to be a person of independent means living on the rents of his houses. That statement, which is admitted now to be untrue, was evidently made with the object of deceiving the Sub-Registrar as to his respectability. The will is in favour of his employers. What reason is assigned for not calling in the civil trial the one living man (Madho Prasad) to depose to the fact of identification? What was the reason for relying solely on the deposition of Bisheshur in the Revenue Court without allowing its truth to be tested by the evidence of Madho Prasad the co-identifier?

These circumstances make a careful examination of the whole evidence, together with the will, essential. The third condition debar the nephews from performing the alleged testator's obsequies, or even touching his corpse. It appears to their Lordships that only a person animated by hatred or smarting under a wrong could have pronounced such a sentence against his nearest male relations even though he might give his property to someone else. The learned Judges of the High Court on this point say as follows :—

“The clause in the will which says that ‘the nephews and others’ should not touch his corpse is explained by the circumstance that it is a general belief among Hindus (an erroneous belief no doubt) that the person who performs the funeral ceremonies acquires a right to the property of the deceased. It is probably to remove disputes which might arise in consequence of this impression that the deceased directed that his funeral obsequies should be performed by the sons of his niece and not by his nephews and other persons, and that these persons were not to touch his corpse.”

This view of the learned judge is purely hypothetical and speculative. Radha Kishen, on the contrary, appears to suggest in his evidence that the nephews and Ram Narain were on bad terms. His evidence on this point should be given in his own words :—

“Babu Bindeshri Prasad, Narsingh Das and Debi Prasad used sometimes to go to Ram Narain's house in Chunar and Ram Narain also sometime went to their house. They did not come for any particular business; they used to come simply for ordinary visits and go away. When I went to Chunar in the month of Sawan this took place, namely, that Bindeshri Prasad saw Babu Ram Narain but did not salaam him. I asked Ram Narain why Bindeshri Prasad did not salaam him. He (Ram Narain) replied that I was a boy and could not know (*i.e.*, understand) the matter, and that he did not wish to speak to me about it.”

There can be little doubt on the evidence furnished by the plaintiffs' account books and the oral evidence on their side that Ram Narain's relations with his nephews had been amicable, that without giving up his own house he lived a part of the time with them and had at least some portion of his work done by their servants. He is said to have died in the afternoon about 5 o'clock on the 30th November. The time is given by one of the defendants' own witnesses; the whole family, consisting of Bhowani Prasad and his two sons who were at Mirzapore at the time and his wife Baisakha left for Chunar the same night by the 9 o'clock train. The

cremation of Ram Narain is said to have taken place before they left Mirzapore, so the body must have been cremated at least an hour or two before. It seems to have been done in somewhat of a hurry and without any notice to caste people and neighbours? Not even Radha Kishen had any knowledge of the illness of his grand-uncle, or of his death, or of the execution of the will, until the father and mother and the two brothers unexpectedly arrived at Ram Narain's house in Chunar either the same night or early next morning. The plaintiffs were kept absolutely ignorant of Ram Narain's arrival, illness and death at Bhowani Parshad's house. None of the neighbours of Bhowani Parshad ever heard of his arrival or illness, or were told of his death.

Coming now to the will itself: it purports to be signed by Ram Narain in five places; in every case the signature is Babu Ram Narain. It is common knowledge that "Babu" is a title and not a name. The signature "Babu Ram Narain" is equivalent to John Smith signing himself as "Mr. John Smith," a circumstance of the most extraordinary character in Indian social life. There is, their Lordships think, considerable force in the contention on the part of the plaintiffs that someone who was putting the name of Ram Narain on the document inadvertently wrote "Babu Ram Narain," and as hurry was essential, in order to maintain uniformity put the other alleged signatures in the same way. A considerable number of admittedly genuine documents signed by Ram Narain have been produced by the plaintiffs, and they all bear the ordinary signature "Ram Narain." On the defendants' side, the only explanation with regard to this extraordinary circumstance of Ram Narain signing himself as Babu Ram Narain is given by Radha Kishen, that in petitions to the authorities as a mark of respect Ram Narain signed simply as Ram Narain, and that in other cases he signed as Babu Ram Narain. This is palpably a false explanation and opposed to all Indian experience. The petition of the 27th November presented to the Sub-Registrar purports to be on behalf of Babu Ram Narain by the pen of Bhowani Parshad. In that instance his name was put as it would ordinarily be put when the name is written by somebody else. Great reliance, however, has been placed on an entry in the Sub-Registrar's book with regard to the return of the will after registration to Bhowani Parshad. It purports to be an authority from Ram Narain. It runs as follows:—

"(Sd.) Babu Ram Narain—the will should be made over to Babu Bhawani Prasad—by the pen of Besheshar Malai.

"(Sd.) Babu Ram Narain, in autograph.

"(Sd.) Babu Bhawani Prasad, in autograph."

It is said that the signature "Babu Ram Narain" is in Ram Narain's own handwriting, and that there is no challenge of it in the plaintiffs' evidence. Narsingh Das, one of the plaintiffs, was examined on the 7th May. He was asked in cross-examination by the defendants whether he could recognise Babu

Ram Narain's signature, and he had answered in the affirmative ; but this particular signature was never put to him, nor was he questioned whether it was not the signature of Ram Narain. Radha Kishen, no doubt apparently in answer to a question by the plaintiffs' pleader, professed to identify it as Ram Narain's signature. It is to be observed that the defendants' case closed on the 11th May, and the plaintiffs at once applied to be allowed to give rebutting evidence. Unfortunately, the Subordinate Judge refused their application. The entry itself, however, is most suspicious, and shows that the signature "Babu Ram Narain in autograph" cannot be the signature of Ram Narain ; that it must have been put there by the person who wrote the endorsement. It is to be noted that Bhowani Prasad himself, in the petition of the 27th November, which he purported to sign for Ram Narain, did not prefix the word "Babu" to his own name. In the endorsement for the return of the document to Bhowani Prasad the word "Babu" is, as a matter of fact, prefixed to his name. It clearly shows that his (Bhowani Prasad's) signature was written for him by the writer of the entry. It is not denied that "Babu Ram Narain" at the beginning is in the handwriting of Bisheshur. What reason is there to assume that "Babu Ram Narain" above "Babu Bhowani Prasad" is in the real Ram Narain's handwriting?

The Subordinate Judge before whom the case was tried, and before whom all the witnesses were examined, although he did not make any remarks about their demeanour, came to the conclusion that, having regard to all the circumstances in the case, the will was not proved. The High Court came to a different conclusion. A careful and critical examination of the evidence leads their Lordships to the conclusion that the Subordinate Judge was right. In the first place there is no evidence as to the fact when Ram Narain came to Mirzapore, when he was taken ill and under what circumstances he died. The question then arises, how did the will come into existence ? Was it copied from a draft ? Who drafted it ? Was it dictated by Ram Narain himself in the condition he was ? The men who could have given evidence and explained all these matters, the writer, the people living in the house, those who have benefited under the will, have not been called as witnesses. Again, the loss of the will in the most extraordinary manner is a circumstance which throws the greatest doubt on its authenticity. Why should a document of this important character, of which Bhowani Parshad obtained possession on the 2nd December from the Sub-Registrar's office, instead of being kept in the custody of Bhowani Parshad himself, or of Baisakha the primary beneficiary, be entrusted to a youth like Radha Kishen ; and why should it be necessary to tell him to take care of it ? Why should Radha Kishen carry it about ? Why should he take it to Jagdamba ? It was certainly not necessary to show him the will for giving information to the authorities about Ram Narain's death. That Jagdamba is in league with the defendants is clear from his

evidence. Again, why should Radha Kishen carry it to Mirzapore for no reason whatever? The reason he gives in his deposition cannot be true, for it was not necessary for him in order to get a petition of objection prepared that he should take the will with him. He loses the will on his way back, but gives no information to the police, but contents himself with sending a petition to the Collector. He says he reported its loss to a pleader, but the pleader is not called to say that he ever saw a will or heard anything about its loss.

The onus rests on the defendants to prove without reasonable doubt that it is the will of Ram Narain. Have they done so? The scribe who could have told us how and from whom the will originated, and whether it was in fact executed by the alleged executant has not been called, and no reason has been given for not calling him. Bhowani Prasad, Jiwan Dass and Baisakha, who were admittedly in the house at the time (omitting the younger son), and who could have given valuable testimony with regard to all the circumstances, have carefully avoided giving evidence; the pleader who is alleged to have seen the will on the 11th December has not been called either to support that fact, or that Radha Kishen went to him after the alleged loss of the will. Madho Prasad, one of the two identifiers of the alleged Ram Narain, has not been called, and no reason is assigned why he has not been called. The identification before the Sub-Registrar, which forms the pivot of the case, depends on the testimony of Bisheshur Malviya, without any opportunity being given to test his evidence by the evidence of Madho Prasad. The story of the defendants rests on isolated witnesses which renders impossible any real comparison and testing. The loss of the will rests on the uncorroborated testimony of Radha Kishen; the seeing of the will by any outsider on the testimony of the Patwari Jagdamba, a palpably false witness; the story of the identification depends on Bisheshur Malviya, without the evidence of Madho Prasad, the co-identifier. The evidence of execution consists of the testimony of Situl Parshad and Thakur Prasad, called in separately—again to avoid testing. Both these men say that on the 27th November they found Ram Narain was perfectly well; the petition of the 27th says he was ill; the Sub-Registrar says that on the 28th the man identified appeared to him ill. Which statement is true? The will bears the unusual signature “Babu Ram Narain,” so does the authority for the delivery of the document to Bhowani Prasad.

In their Lordships' opinion, it has not been satisfactorily proved that Ram Narain made a will, and they will therefore humbly advise His Majesty to allow the appeal and set aside the decree of the High Court, and restore that of the Subordinate Judge with costs here and in the Courts below.

In the Privy Council.

, BINDESHRI PRASAD AND ANOTHER

vs.

MUSAMMAT BAISAKHA BIBI AND OTHERS.

DELIVERED BY MR. AMEER ALI.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1919.