



**In the Privy Council.**

**ON APPEAL**

FROM THE SUPREME COURT OF FIJI.

**44432**

BETWEEN

(1) BATTAN SINGH (2) WALAITI RAM and  
(3) KHAZAN SINGH (Plaintiffs) - - - *Appellants*

AND

10 (1) AMIRCHAND (2) MEHAR (3) WARYAMA  
(4) BANTA (5) SONDHI and (6) MUNSHI  
(Defendants) - - - *Respondents.*

**CASE ON BEHALF OF RESPONDENTS  
Nos. 1 and 2.**

RECORD.

1. This is an appeal by leave of the Supreme Court of Fiji, from a judgment dated the 1st June, 1945, of a single judge of the said Supreme Court sitting in its Probate jurisdiction decreeing probate of a will dated the 3rd April, 1944. p. 211.  
pp. 207-210.

2. The proceedings giving rise to the present appeal were instituted by the Appellants, who will be referred to hereinafter as "the Plaintiffs," against the Respondents who will be referred to hereinafter as "the Defendants," for a claim that the Court should pronounce against a will dated the 3rd April, 1944, and should decree probate of an earlier will dated the 25th February, 1944. 20

3. The question for determination in this appeal is as to the due execution and validity of a will dated the 3rd April, 1944, of one Jaimal deceased.

4. The said Jaimal was a moneylender, who at all material times was domiciled in Fiji, and died there. p. 2, ll. 33-35.

5. The said Jaimal executed several wills of which the only relevant ones for the purposes of this appeal are :— 30

1. Dated the 25th February, 1944, in favour of the Defendants Nos. 3 to 6 who were the nephews of Jaimal, and who were living in India. The Plaintiffs who were the President, Secretary and Treasurer of the Sikh Gurudwara Committee at Samambula Suava, were appointed as executors and trustees of the said will. pp. 8-9.

p. 19.

2. Dated the 3rd April 1944, revoking all former wills under which the Defendants Nos. 1 and 2 were made the executors and sole beneficiaries as tenants in common in equal shares.

p. 2, ll. 41-42.

6. On the 4th April, 1944, Jaimal died in Fiji.

pp. 1-4.

7. On the 9th August, 1944, the Plaintiffs instituted

#### THE PRESENT SUIT

in the Supreme Court of Fiji.

pp. 2-4.

p. 2, ll. 33-35.

p. 3, ll. 5-7.

8. By their Statement of Claim dated the 9th August, 1944, the Plaintiffs alleged inter alia, that they were the executors of the will of Jaimal dated the 25th February, 1944; that the Defendants Nos. 3 to 6 10 were the sole next of kin of the said Jaimal, entitled to share in the estate of the said Jaimal in the event of an intestacy; that the will of Jaimal dated the 3rd April, 1944, was not duly executed according to the provisions of the Statute 7 Will. IV and I Vict. c. 26; that at the time of the execution of the said will Jaimal was not of sound mind, memory or understanding; that the execution of the said will was obtained by the undue influence and fraud of the Defendants Nos. 1 and 2 and that at the time of the execution of the said will, Jaimal did not know or approve of the contents thereof.

p. 3, ll. 8-10.

p. 3, ll. 15-17.

p. 3, ll. 27-28,  
ll. 38-40.

p. 4, ll. 3-4.

p. 4, ll. 13-20.

The Plaintiffs therefore claimed that the Court, should pronounce 20 against the will of the 3rd April, 1944, and decree probate of the will dated the 25th February, 1944.

pp. 10-15.

9. By their statement of defence and counterclaim dated the 4th September 1944, Defendants Nos. 1 and 2 denied the Plaintiffs' allegations as to the validity and due execution of the will dated the 3rd April, 1944, and counterclaimed that the Court should pronounce against the will dated the 25th February, 1944, and should decree probate of the will dated the 3rd April, 1944.

p. 15, ll. 20-24.

10. At the trial both sides adduced oral and documentary evidence.

pp. 207-210.

11. The Supreme Court delivered judgment on the 1st June, 1945. 30 The said judgment was delivered by the learned Chief Justice.

12. After dealing with the facts and the Plaintiffs' allegations, the learned Chief Justice held :

p. 208, ll. 23-35.

1. That on the evidence he was satisfied, that the will was duly executed, and that Jaimal did know and did approve of its contents.

p. 208, ll. 26-27.

2. That there was no evidence of undue influence.

p. 210, ll. 29-30.

3. That the evidence showed that on the 31st March, 1944, when Jaimal gave instructions for his will, he was of sound mind, memory, and understanding.

p. 210, ll. 33-35.

4. That at the time of the execution of the will dated 3rd April, 40 1944, Jaimal clearly understood the provisions of the will he was

executing, and made it clear that they were in accordance with his wishes.

In the result the Supreme Court decreed probate of the will dated the 3rd April, 1944. p. 210, ll. 36-37.

13. From the said judgment of the Supreme Court, the Plaintiffs have now preferred this appeal to His Majesty in Council, and Defendants Nos. 1 and 2 respectively submit that the same should be dismissed with costs here and below for the following amongst other

### REASONS

- 10 (1) Because the Supreme Court was correct in decreeing probate of the will dated the 3rd April, 1944.
- (2) Because as correctly held by the Supreme Court the said will was duly executed according to the provisions of the Wills Act, and was not vitiated by undue influence of Defendants Nos. 1 and 2.
- (3) Because the uncontradicted evidence on Record shows that when instructions were given for the preparation of the said will Jaimal was of sound mind, memory and understanding.
- 20 (4) Because the evidence clearly shows that at the time of the execution of the said will, Jaimal understood the provisions of the said will, and that they were in accordance with his wishes.
- (5) Because the alleged will of the 25th February, 1944, was revoked by the will of the 3rd April, 1944.
- (6) Because the judgment of the Supreme Court is correct for the reasons given in support thereof.

H. J. UMRIGAR.

30 T. L. WILSON & Co.,  
6 Westminster Palace Gardens,  
London, S.W.1,  
*Solicitors for the Respondents Nos. 1 and 2.*

No. 24 of 1946.

In the Privy Council.

ON APPEAL FROM THE SUPREME  
COURT OF FIJI.

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BETWEEN

BATTAN SINGH and Others *Appellants*

AND

AMIRCHAND and Others - *Respondents*

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CASE ON BEHALF OF  
RESPONDENTS Nos. 1 and 2.

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