

(1917) 02 MAD CK 0017
In the Madras High Court

B. Raja Rajeswara Setupati Avergal Alias Muthuramalinga
Setupati Avergal, Raja of Ramnad

APPELLANT

Vs

Rajagopala Iyer and Others

RESPONDENT

Date of Decision : 23-02-1917

Acts Referred:

Citation : AIR 1918 Mad 400 : 43 Ind. Cas. 164 : (1918) 7 LW 28

Hon'ble Judges : John Walls, C.J; Seshagiri Aiyar, J

Bench : Division Bench

Judgement

1. The Subordinate Judge held that these appeals along with others already disposed of by us were concluded by the decision of this Court in Raja

Rajeswara Dorai v. Arunachellam Chettiar 19 Ind. Cas. 596 He has not considered the special allegations as to the continuance of undue influence

contained in the pleadings in these appeals. In the plaint, it is stated that ""the Dewan Trustee, Rao Bahadur Venkata Ranga Aiyar, old and infirm as

he was, was also under the domination and influence of the lessees and particularly of Arunachellam Chettiar. Arunachellam Chettiar became more

and more powerful and the position of the Dewan more and more difficult and dependent. In these circumstances, the Dewan Trustee had no

independent course left to him but to follow what the lessees wanted."" The suggestion is that the alienation made in these various suits were due to

the influence of the person above mentioned. There can be no doubt that the trustee ought to have taken steps to set aside the deeds of transfer if

they were brought about by the exercise of undue influence over the late Rajah. If the allegation is true that he himself was similarly subjected to

undue influence, the cause of action would not arise for the plaintiff until the cessation of that influence. In Sri Kishan Lal v. Musammat Kashmiro

31 M.L.J. 362 : 20 C.W.N. 957 : (1916) 1 M.W.N. 433: 14 A.L.J. 1236the Judicial Committee of the Privy Council observe obiter, with

reference to undue influence operating on the mind of a pardanashin lady, that time did not begin to run against her until the death of the person

who dominated her will, which, we are disposed to think, only means the date on which the facts must be considered to have come to the

knowledge of the plaintiff within the meaning of Article 91 of the Limitation Act. Applying this test, it is clear that the suit should not have been

disposed of on the pleadings. In some of the complaints, there is a further allegation that the succeeding trustees were subjected to similar influences.

We are unable to say on the materials placed before us that there is no substance in these contentions.

2. As the learned Advocate General pointed out, where a trustee had dealt with the property entrusted to him in violation of the trust, the

beneficiaries are entitled to sue for possession of the property (Section 63 of the Trusts Act). On examining the document executed by the Dewan

Trustee, Exhibit II, we are not prepared to accede to the contention of Mr. G.S. Ramachandrier that the property was not transferred by the

trustee The first clause says "that Subba Sastrial should enjoy the property from generation to generation for ever and ever free from all claims,

with full powers of sale, gift, etc.," which is mentioned in the said deed and also mentioned by Mr. G.S. Ramachandra Aiyar. That we should

decide the question of limitation upon the materials placed before us is likely to prejudice both the parties.

3. We think it desirable that the cases should be remitted to the Court below for a proper trial on the merits. Costs will abide.