

(1986) 07 MAD CK 0035
In the Madras High Court

Karuppayee Ammal

APPELLANT

Vs

Karuppiyah Pillai and Another

RESPONDENT

Date of Decision : 01-07-1986

Acts Referred:

Citation : (1987) 2 MLJ 138

Hon'ble Judges : Swamikkannu, J

Bench : Division Bench

Judgement

Swamikkannu, J.—This is an appeal arising out of the Judgment that had been delivered by the learned District Judge, Pudukkottai in O.S. No. 5 of 1975 on 24.2.1979, dismissing the suit with costs for the recovery of Rs. 20,840 due under a mortgage and also directing lawyer's fee one set.

2. The case of the plaintiff is that the first defendant executed the suit mortgage on 10.4.1974 for Rs. 20,000 agreeing to pay interest at 6% per annum payable in two years, that if there was default in the repayment of the amount within the period prescribed, the first defendant should pay compound interest at the same rate with yearly rests, that on the evil advice of the first defendant he had issued a notice as if the mortgage was obtained by fraud and undue influence without any consideration passed, that because of the issue of the notice by the 1st defendant this suit had been filed even though two years time had not elapsed, that the first defendant was a major, that the first defendant appeared to have executed a release deed on 14.10.1974 in favour of his father, the second defendant and hence he had been added as a party and that the suit amount of Rs. 20,840 was due and payable with subsequent interest.

3. The first defendant put forth the defence that he was born on 20.2.1955, that at the time of the mortgage he had just emerged from minority, that he was the only son of his parents and he was living with his parents, that it was his father who was looking after the family that there was no need to borrow a large sum of Rs. 20,000, that one Chelliah Pillai preferred a complaint against the first defendant, his father, the plaintiff's husband and others, that when the

investigation was pending the plaintiff's husband caught hold of the first defendant, kept him under duress with no chance to communicate with his father and other relations, threatened him with injury to person, property and reputation and plied him with drink and reduced him to a state of imbecility, that using the complaint and the police investigation which followed as a lever the plaintiff's husband and his henchmen compelled the first defendant to sign various documents the purport of which was not known to the first defendant, that this mortgage appeared to have been taken in the name of the plaintiff by her husband, that when he came to know of it he issued a notice immediately on 9.10.1974 and that the suit was liable to be dismissed.

4. The second defendant Alaga Pillai has inter alia contended that the plaintiff did not and could not advance any sum either for the alleged promissory note or the alleged payment of Rs. 9,000 mentioned in the document, that the suit mortgage bond was not supported by consideration, that the first defendant was not managing the properties, that there was no necessity for him to borrow large sums from the plaintiff or Sundara Thevar, that the release deed executed by the 1st defendant in favour of the 2nd defendant was true and valid document, that the plaintiff, her husband and Sundara Thevar all joined together and procured false documents like promissory notes, mortgage without paying any money, that the very dates of the impugned promissory notes viz., January 1974, March 1974 and April, 1974 would show the falsity of the transaction, that when the investigation on the complaint given by Chelliah Pillai was pending, the plaintiff and her husband and his henchmen appeared to have ushered him in the Sub-Registrar's Office under duress and threat, that the suit was premature and that the suit was liable to be dismissed.

5. On the above pleadings, the following issues were framed by the lower Court for trial:

1. Whether the plaintiff is entitled to the suit amount?
2. Whether the suit mortgage deed is not supported by consideration?
3. Whether the suit mortgage deed was executed by the defendant under duress as alleged by him in the written statement?
4. To what relief, are the parties entitled?

Additional issues framed on 21.12.1978:

Whether the suit debt is not binding on the 2nd defendant?

6. The plaintiff Karuppayee Animal, examined herself as P.W.I and also examined on her behalf P.W. 2 Veerappa Filial, P.W. 3 Thangarasu P.W. 4 Ponnuchamy Pillai, P.W. 5 Arunachalam Filial and P.W.6 Renganathan. On behalf of the plaintiff Ex. A1 mortgage bond dated 10.4.1974 executed by the 1st defendant in favour of the plaintiff for Rs. 20,000, Ex. A2 lawyer notice dated 8.10.1974 issued to the plaintiff by the 1st defendant, Ex. A3 promissory note dated 15.1.1974 executed

by the 1st defendant in favour of the plaintiff for Rs. 6,000, Ex. A4 office copy of lawyer notice dated 1.11.1974 issued in reply by the plaintiff to the 1st defendant, Ex. A5 mortgage bond dated 15.10.1967 executed by Pereenja Pillai to the plaintiff for Rs. 1,300, Ex. A6 mortgage bond dated 17.7.1974 executed by one Kathan Kudumban to the plaintiff for Rs. 2,000 and Ex. A7 promissory note executed by the 1st defendant in favour of one Sundararaja Thevar for Rs. 5,000 (dated 26.3.1974) were filed. The first defendant Karuppiyah Pillai examined himself as D.W.I. The 2nd defendant Alagu Pillai examined himself as D.W. 2, D.W. 3 Karuppa Pillai and D.W. 4 Pichai Pillai were also examined on behalf of the defendant. Ex. B1 lawyer notice dated 1.11.1974 issued by the plaintiff to the 1st defendant, Ex. B2 registered release deed dated 14.10.1974 executed by the 1st defendant in favour of the 2nd defendant, Ex. B3 certified copy of the order dated 9.10.1974 in P.R.CNo.V/74 of the Chief Judicial Magistrate, Pudukkottai, Ex. B5 promissory note executed by one Poonuchamy Pillai dated 2.9.1974 in favour of the 1st defendant for Rs. 1,300, Ex. B6 promissory note dated 16.7.1978 executed by one Ponnuchamy Pillai in favour of the 1st defendant for Rs. 8,000 Ex. B7 dated 7.10.1974 certified copy of written statement filed by the 1st defendant in O.S. No. 614 of 74 of the District Munsif's Court, Aranthangi, Ex. B9 dated 16.2.1977 certified copy of written statement filed by the 2nd defendant in O.S. No. 614 of 74 of D.M.C., Aranthangi and Ex. B10 dated 18.10.1978 certified copy of decree in O.S. No. 614 of 1974 of the District Munsif's Court, Aranthangi were filed on behalf of the defendants.

7. The lower court under issues Nos. 1 to 3 held that the means of the plaintiff to advance large amounts had not been established, that a perusal of Ex. B2 shows that the first defendant should have been cheated by persons at that time and so steps would have been taken for safeguarding the properties and that the mortgage Ex. A1 was not supported by consideration. The issues were found against the plaintiff and in favour of the first defendant. According to the lower court, as the release deed had come into existence after the suit mortgage, it would not affect the right of the plaintiff if any, under Ex. A1 Even if the mortgage is held to be true and valid, it would be binding only on the 1st defendant and his share of the properties and not the 2nd defendant, the father of the 1st defendant. In the result, the suit was dismissed with costs with lawyer's fees one set as mentioned above. Aggrieved by the above decision of the lower court, the plaintiff Karuppayee Ammal has come forward with this appeal before this court.

8. Mr. G. Subramanian, the learned Counsel for the plaintiff/appellant inter alia contends that the lower court erred in holding that the first defendant had means and source of income and that there was no necessity for borrowing under Ex. A1 and that it failed to see that under Exs. A3 and A7, he had borrowed amounts and had also faced suit in Ex. B7. It is further contended on behalf of the appellant herein that the lower court erred in holding that there was no need or necessity for the borrowing by the 1st defendant merely from the possession of agricultural lands and income therefrom which could never be the factor to

decide the wants of persons for many reasons. It is also contended on behalf of the appellant herein that the court below erred in presuming that the balance of Rs. 9,000 could not have been borrowed after he received Rs. 5,000 under Ex. A3 and failed to see that the amount under Ex. A3 had been discharged in Ex. A1. According to the learned Counsel for the appellant, the court below erred in holding that there was no pressure of any kind to borrow the suit amount in Ex. A1 as against the specific recitals stated in the mortgage deed. According to the learned Counsel for the appellant, the reasons given, by the lower court holding that Ex. A1 was the result of undue influence exercised on the first defendant at the instance -of the plaintiff, is not correct and in accordance with law. It is also contended by Mr. G. Subramanian, the learned Counsel for the appellant that the alleged coercion said to have been exercised by the plaintiff's husband taking advantage of criminal proceedings in Ex. B3 is mere conjecture, and surmise and as such, the plea of coercion ought to have been rejected by the lower court. It is further contended that Ex. A3 was not created by the plaintiff for giving reality to Ex. A1, the same having been discharged in Ex. A1. It is also pointed out that the court below erred in rejecting the evidence of P.W. 4 as the same had emanated from an interested and obliging person. It is also pointed out that the lower court is not correct when it had held that the plaintiff/appellant herein had no means to pay Rs. 6,000 under Ex. A1 as against Exs. A5 and A6 wherein she had lent amounts to various persons and when she was admittedly managing the lands of her father.

9. The point for consideration in this appeal is whether the first defendant has proved his case of coercion and undue influence regarding the execution of Ex. A1 in favour of the plaintiff/appellant herein?

10. Mr. G. Subramanian, the learned Counsel for the appellant refers to the following decisions, namely, *Saraswathi Ammal v. Panchalai Ammah* (1969) 82 L.W. 52 (Journal Section), *Irudayam Ammal and Others Vs. Salayath Mary*, and *The Melur Co-operative Marketing Society Vs. Salia Maniam and Others*, , for the proposition that when once a mortgage had been effected by registration, certain consequences follow, namely, that there is a presumption that the said mortgage deed is supported by consideration and is one which had been validly executed by the executant-mortgagor in favour of the mortgagee.

11. In *Saraswathi Ammal v. Panchalai Ammal* (1969) 82 L.W. 52, in a suit on a mortgage the lower court found that the mortgage was a nominal document and was unsupported by consideration. It was contended in second appeal that the approach of the lower appellate court to the case was erroneous in that it had not taken note of the fact that the mortgage had been registered and that the endorsements show that the consideration has already passed and that two promissory notes had been directed to be discharged and that the endorsement prima facie supported the case that the mortgage is supported by consideration, and that it is for a person who pleads that it is not supported by consideration, to establish that there are suspicious circumstances about the passing of the

consideration. It was held following the decision *S.K. Raghavendra Rao Vs. Venkatasami Naickan and Others*, , that if in such a case the plaintiff-mortgagee has proved the execution of the document and has let in evidence the recital therein as to the passing of consideration, that is an admission by the mortgagor whose representative the defendant is. In such a case, unless in the course of proving the document circumstances have been elicited by cross-examination of witnesses which throw a great cloud or suspicion on any part of the case, the recitals would be *prima facie* proof of the passing of the consideration, and it is for the defendant who claims under the person who made the admission to meet the presumption arising from the recitals. The judgment of the trial court was set aside, and the case was remanded.

12. In *The Melur Co-operative Marketing Society Vs. Salia Maniam and Others*, , it was held that if the intention is that title should pass on registration, the sale is complete as soon as the deed is registered whether the price has been paid or not. The purchaser is entitled to sue for possession although he has not paid the price.

13. In *Irudayam Ammal and Others Vs. Salayath Mary*, , it was held that the certificate of registration under the provision of Section 60 of the Registration Act is a *prima facie* proof of execution in absence of other evidence. Ramamurti, J., as he then was observed in paragraph 6 as follows:

From the above, it will be seen that this is a clear case to which the well-known maxim "*Omnia praesumuntur contra spoliatores*" applies.

(Vide *Broom's Legal Maxims* 1939, 10th Edn. pp.637 to 640). "If a man by his tortious act, withholds the evidence by which the truth of his case would be manifested, every presumption to his disadvantage will be adopted. "Irudaya Udayar and the plaintiff who is a tool in the former's hands are clearly the wrong-doers and every adverse inference will be drawn against them as they should take responsibility for the non-production of the original will. The first defendant has also satisfactorily accounted for the non-production of the attesting witnesses as they are dead and no useful evidence could be given by the scribe. The first defendant has therefore, proved the will by other acceptable, satisfactory evidence supplemented by such presumptions as would arise under the provisions of the Regulation Act and Section 114 of the Evidence Act on the facts of this case. There is a general presumption about the execution of the will arising u/s 60 of the Indian Registration Act (Vide *Mullah's Indian Registration Act*, 7th Edn., page 256). It is true that registration, by itself, in all cases, is not proof of execution, but if no other evidence is available, the certificate of registration is *prima facie* evidence of its execution and the certificate of the registering officer u/s 60 of the Registration Act is relevant for proving execution. (See discussion in *Sarkar's evidence*, latest, 12th Edn. P. 640). As observed by the Privy Council in *Md. Ihtisham Ali v. Jamna Prasad* (1921) 48 I.A. 365 : 15 L.W. 104 AIR 1922 P.C. 56, registration is a solemn act and if no other evidence is available, the court can presume that the Registrar performed his duty of

satisfying himself that the document presented to him for registration was duly executed by the executant and the executant was duly and properly identified before him. The same view was taken in AIR 1943 83 (Privy Council) , in which, after referring to the earlier decision of the Privy Council (sic) Ali v. Jamna Prasad AIR 1922 P.C. 56 : (1921) 48 I.A. 365, (referred to above) Sir George Rankin observed that the evidence of due registration is itself some evidence of execution as against the other side. There is a full discussion on this question, as to the presumption arising from the fact of due registration, coupled with the presumption arising u/s 114 of the Indian Evidence Act in a Bench decision of the Mysore High Court in Hutchegowda v. Chennigegowd AIR 1953 Mys. 49, in which it was held that the evidence that a document was duly registered is some evidence of its execution by the person by whom it purports to have been executed. There is a full discussion of the relevant case law including the decision of the Privy Council in Md. Ihtisham Ali v. Jamna Prasad AIR 1922 P.C. 56 : L.R. (1921) 48 IndAp 365, aforesaid. In Revanna v. Dr. A.V. Ranga Rao AIR 1951 Mys. 119, it was observed that in cases where it is impossible for any person to prove execution of a document on account of the death of all the persons concerned, the best and the only possible evidence that may be available is that of a certified copy of the registered document and that in such cases, a presumption could arise u/s 60 of the Registration Act along with Section 114 of the Evidence Act See also Kashibai Martand Vs. Vinayak Ganesh and Others, . It will be seen that in the ultimate analysis, the problem in each case is "has the best evidence been adduced on the facts of each case; in the instant case, we have not the slightest hesitation in holding that this essential test for arriving at the truth has been amply satisfied.

14. Referring to the above decisions Mr. G. Subramaniam submits that when there is a specific recital in the registered mortgage deed that the consideration has passed from the plaintiff, it is not open to the defendants-respondents to put forth the plea in para 4 of the Written Statement which is to the effect that they plied him with drink and reduced him to a state of imbecility and they went to work on his enfeebled mind and compelled him to append his signature to various documents whose purport he did not comprehend and was incapable of comprehending. In Ex. A2 notice it is mentioned as follows:

On 10th April, 1974 your husband by the exercise of undue influence over my client who was very weak in mind and understanding had a mortgage bond subscribed by my client for Rs. 20,000/- in your favour in discharge of the two promissory notes referred to above and cash consideration of Rs. 9,000/- alleged to have been received by my client on that date. No such amount was paid and the recital of consideration is false. The recitals in the mortgage bond that my client borrowed that amount for family expenses, cultivation expenses and for litigation are absolutely false. My client Is not having any cultivation of his own while all the joint family lands are cultivated by my client's father beyond subscribing his signature due to the undue influence exercised by your husband and the domineering position which your husband had over my client out of fear

for the safety of his life subscribed his signature without understanding the significances or the recital therein.

Ex. A3 reads as follows:

15. In Ex. A1 registered mortgage deed, Karuppiyah Pillai the first defendant herein had been identified before the Sub-Registrar by one Veerappa Pillai and Thangaraju. Both of them who had identified the first defendant were examined as P.Ws. 2 and 3 respectively on behalf of the plaintiff. Nothing material has been elicited from them so as to discredit their evidence. Karuppiyah Pillai has affixed his left thumb impression on the reverse of page 1 of Ex. A1 in token of having executed the mortgage deed. It is also seen from the endorsement made in the Sub Registrar's Office that between 1 P.M. and 2 P.M., on the 10th of April, 1974, the document Ex. A1 had been presented before the office of the Sub-Registrar for registration. The document has been duly registered. The relevant portion of Ex. A1 proved through D.W.1 reads as follows:

If it is also relevant in this connection to note that each page in Ex. A1 has been signed by the first defendant in English. P.W. 2 Veerappa Pillai and P.W. 3 Thangarasu have attested Ex. A1 registered mortgage deed. One M. Balasubramanian of Manalur wrote the contents of Ex. A1 as a scribe. In Ex. A4 equivalent to Ex. B1 i.e., the notice issued to the plaintiff it inter alia stated as follows:

This has reference to your notice issued to my client Karuppayee Ammal wife of Kalimuthu Pillai, Manalur under whose instructions I am causing this reply issued to you.

The mortgage deed executed on 10.4.1974 is fully supported, by consideration, valid and enforceable.

Your client is a youth of perfect understanding and is capable of taking care of himself and his interest and managing his affairs. In fact the criminal case arose only on his suspected misdemeanours with Kamatchi Ammal. My client's husband and others have been implicated and are put to great sufferings and also lot of expenditure. My client does not admit that your client's father is exclusively managing the family affairs. In fact your client's father is aged, infirm and unable to move from one place to another. Your client has been managing the family and the properties. My client does not admit that your client's father was away being scared away by the criminal case. He was all along in the village.

My client emphatically denies the allegations of undue influence, coercion, fraud and dominating influence of my client's husband over your client. The words are coined for the purpose of refusing payment to my client due on the legally valid properly executed mortgage deed - fully supported by lawful consideration. The documents concerned were executed on different dates for proper consideration.

4. The promissory note executed by your client on 15.1.1974 after having

received Rs. 6,000. Your client has executed the promissory note Sundararaja Thevar for Rs. 5,000 which my client had discharged as per your client's direction. Your client at all material times was a free man and was not under any type of influence.

My client is sufficiently affluent to advance amounts.

You are hereby informed to advise your client to pay the amount due on the mortgage deed viz., Rs. 20,000 and interest due till date, failure of which shall force my client to file a suit for recovery of the same and your client will be liable for all costs incidental thereto.

Ex. A7 reads as follows:

16. Before the Transfer of Property Act (No. IV of 1882), a mortgage was not required to be in writing and usufructuary mortgages in the mofussil were generally made without writing by simple delivery of possession. The Transfer of Property Act, as originally enacted, made registration compulsory for all mortgages of Rs. 100 and over, but as to mortgages for less than Rs. 100 allowed either an instrument registered or unregistered or an oral transfer by delivery of possession where the mortgage was not a simple mortgage. This corresponded with the provision for optional registration in the Registration Act of 1877. The registration must be valid according to the law in force in India. Thus, if the property is so incorrectly described that it cannot be identified, or when the registration has proceeded on a mis-description which is a fraud on the law of registration, or when the deed is registered in a circle in which the property is not situate or an infinitesimal property not really intended to be transferred is inserted in the deed only for the purpose of creating jurisdiction in the registration district where the properties really intended to be transferred are situate or is not presented for registration by the proper person, the mortgage is invalid. When both a sale deed and an agreement to convey are executed with the intention that the transaction should be mortgage, both the deeds must be registered.

17. A mortgage deed invalid for want of registration cannot operate as a charge, but it would be admissible in evidence for a collateral purpose to prove the nature and character of the possession under the Privy Council ruling in *Varatha Pilled v. Jeevatatham mal* 38 M.L.J. 313 : 10 L.W. 639 AIR 1919 P.C. 44 : L.R. 46 IndAp 285 : I.L.R.(1919) Mad. 244. Following that ruling, it has been held that a plaintiff may sue on title for possession after he had executed a usufructuary mortgage which was invalid for want of registration, or use the unregistered deed to defeat the defendant's claim to title by adverse possession.

18. Part 10 of the Indian Registration I Act deals with the effects of registration and non-registration, Sections 47 to 50 of the Indian Registration Act (Act XVI of 1908) deal with the above subject. When a valid mortgage had been executed by the first defendant herein and it H mentioned in the recitals therein that the consideration did pass from the plaintiff/appellant herein to the first defendant In

toe manner set out in the contents of Ex. A1, the plea of the first defendant that he had been coerced to execute the suit mortgage deed cannot be upheld unless there is convincing grounds to uphold such a case. The first defendant had gone to the Sub-Registrar's office and presented Ex. A1 suit mortgage deed and his identity was divulged at the instance of P.W. 2 and P.W. 3 before the Sub-Registrar. It is also relevant in this connection to note that the first defendant has become a major and two years have elapsed since attaining of majority by the time Ex. A1 suit mortgage deed had been executed by him and registered by him, in that he himself had presented Ex. A1 for registration. The lower Court had given certain instances which weighed with it so as to hold that Ex. A1 is not supported by consideration and that it had been obtained by fraud and coercion. Undue influence is defined by the Indian Contract Act in Section 16 as follows.

1. A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) Where he holds a real or apparent authority over the other, or where he stands, in a fiduciary relation to the other; or

(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters, into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act (1 of 1872).

19. "Undue influence" or as it is sometimes called Moral Coercion as distinguished from physical coercion, according to Sir Frederick Pollock "consists in any influence brought to bear upon a person entering into an agreement or consenting to a disposal of property, which, having regard to the age and capacity of the party, the nature of the transaction, and all the -circumstances of the case, appears to have been such as to preclude the exercise of free and deliberate Judgment". Two things have to be proved in order to raise a presumption of undue influence. Firstly, that the relationship between the contracting parties was such, that the was in a position to dominate the will of the other. Secondly, that the position was used to obtain an unfair advantage. If these two things are proved, then a presumption of undue influence arises and

the burden is cast upon the party to show that he has not taken advantage of his position, and that the other party has had independent legal advice in the matter. Such advice must be proved to have been given before the transaction. If this be proved, the transaction will stand. Otherwise, it will be avoided.

20. The Privy Council in *Raghunath Prasad Y. Surja Prasad* 46 M.L.J. 610 : L.R. 51 IndAp 101 : 26 Bom. L.R. 95 : AIR 1914 P.C. 60 : 19 L.W. 470 : 82 I.C. 817 : I.L.R.(1924) Pat. 279, has pointed out the essentials of this section as follows:

By that section, three matters are dealt with. In the first place, the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated, the second stage has been reached (viz.,) the issue whether the contract has been induced by undue influence. Upon the determination of this issue, the third point emerges, which is that of *onus probandi*. The burden of proving that the contract was not induced by undue influence, is to lie on the person who was in a position to dominate the will of the other. Error is almost sure to arise, if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of the parties, whether it is such as to put one in a position to dominate the will of the other.

The same principles have been re-affirmed and attention drawn to the order of the propositions in the pronouncement of the Judicial Committee in AIR 1935 146 (Privy Council) .

21. Coercion : It is seen in the instant case from the evidence available on record both oral and documentary that this element which is complained on behalf of the first defendant-respondent herein has not been proved and the reasons given by the lower Court to hold that Ex. A1 mortgage deed is not supported by consideration, cannot be confirmed by this Court, respecially when Ex. A1 is a registered document which is spoken to comprehensively by the plaintiff herein as P.W. 1 and there is nothing material elicited from her during the time of cross-examination so as to discredit her evidence especially with respect to passing of consideration as mentioned in Ex. A1.

22. Coercion is defined u/s 15 of the Indian Contract Act (Act IX of 1872). It reads as follows:

Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code (XLV of 1860) or the unlawful detaining, or threatening to detain any property, to the prejudice of any person wherever, with the intention of causing any person to enter into an agreement.

Explanation : It is immaterial whether the Indian Penal Code (XLV of 1860) is or is not in force in the place where the coercion is employed.

23. What the Indian Law calls coercion, is called in English Law Duress or Menace. Duress is said to consist in actual or threatened violence or

imprisonment of the contracting party or his wife, parent or child, inflicted or threatened by the other party or by one acting with his knowledge and for his advantage. But coercion as defined in Sec 15 is much wider and includes the unlawful detention of property. Further, it may be committed by any person, not necessarily a party to the contract. Again, it need not be directed against the contracting party or his parent, wife or child but it may be against any person, even a stranger. While in English law, duress must be such as to cause immediate violence and also to unnerve a person with ordinary firmness of mind, these requisities are not necessary in Indian Law.

24. A release executed by a principal to an agent under threat of withholding the account of the agency *Muthia v. Muthukaruppa* 53 M.L.J. 106 : AIR 1927 Mad. 852 : (1927) L.L.R. 50 Mad. 786, a payment of money under an agreement to stifle a non-compoundable offence *Muthu Veerappa v. Ramaswamy* (1917) 31 M.L.J. 264 : ILR 40 Nad. 285, a release obtained from a wife and son under threat of suicide *Vide Ammiraju v. Seshamma* 32 M.L.J. 494 : I.L.R.(1917) Mad. 33, a consent to adoption under threat of obstruction to the removal of a corpse for cremation *vide Ranganayakamma v. Alwar Setti* I.L.R.(1889) Mad. 214, a threat of attachment against the property of a parent to recover a fine due from the son *vide Bansraj v. Secy. of State* 1939 A.W.R. 247, all these have been held to be cases in which the contract was vitiated by "Coercion" within the meaning of the section. But a refusal by a mortgagee to reconvey the property except on certain terms, does not amount to coercion *vide Bengal Stone Co. v. Joseph* (1918) 27 C.L.J. 78. Similarly, a refusal to withdraw a prosecution already launched will not amount to coercion *vide Rameshwar v. Upendranath* 29 C.W.N. 1029.

25. The word "coercion" appears also in Section 72 of the Indian Contract Act. But it has been held by the Privy Council that to constitute coercion u/s 72, an intention to cause any person to enter into an agreement, is not necessary *vide Kamhaya Lal v. National Bank* I.L.R.(1913) Cal. 598.

26. It has been held in *Purushotham v. Pandurang* (1975) 2 All. E.R. 465 , that where coercion is alleged, full particulars must be given in the pleadings and the parties should be strictly confined to that state of facts. In the instant case, it is relevant to note that full particulars have not been given in the plaint regarding the coercion alleged by the first defendant-first respondent herein.

27. The specific evidence of P.W. 1 in this case is that the first defendant had obtained from her Rs. 20,000 as loan and that in pursuance of the same, the first defendant had executed Ex. A1 mortgage deed in her favour. It is also stated by P.W. 1 the appellant herein that the first defendant had obtained a loan of Rs. 6,000 from her prior to Ex. A1 by executing a promissory note in her favour. The first defendant had obtained a loan of Rs. 5,000 from one Sundara Thevar. The above two loans have been mentioned in Ex. A1. Ex. P1 had discharged the debt due and payable by the first defendant in favour of Sundara Thevar and got Ex. A3 returned to her. The first defendant himself had endorsed the relevant

document. When the mortgage deed was written the first defendant wanted reduction in the rate of interest. The first defendant had obtained consideration from the plaintiff on the previous day to the date on which Ex. A1 had been reduced to writing. P.W. 1 has specifically denied the suggestion that she has not given any money as consideration to the first defendant for the execution of Ex. A1 in her favour. The first defendant himself is looking after his family. The consideration of Rs. 20,000 for Ex. A1 had been obtained by the first defendant for his family expenses and also towards expenses for conducting the case. The relevant passage of the deposition reads as follows:

It is relevant to note that in the cross-examination of P.W.1 nothing material has been elicited so as to discredit her evidence especially with respect to passing of consideration under Ex. A1 in favour of the first defendant.

28. The evidence of the first defendant in this regard may also be extracted usefully here. It reads as follows:

29. Though there is stout denial of receipt of consideration under EJUAI by D.W. 1, yet the ipsi dixit of D.W. 1 is not corroborated by any valid evidence both oral and documentary. I have already dealt with the consequences of a valid registration and that how it is too late in the day for one alleging that it has been procured out of coercion and undue influence, that it is a document that had been procured at the instance of person in whose favour the same had been executed, unless the allegations regarding them are made at the earliest possible opportunity. In the instant case before us, we find that the first defendant had not given the particulars of coercion or undue influence in the notice or in the written statement which he has developed in the course of his evidence as D.W. 1.

30. Bearing in mind the relevant provisions of the Indian Contract Act (Act IX of 1872), the Transfer of Property Act (Act No. IV of 1882) and the Indian Registration Act (Act No. XVI of 1908), we find that the allegations made by D.W. 1 in his written statement and spoken to by him as a witness by getting into the box as D.W. 1, do not in any way stand at the very agile and cogent, convincing and trustworthy case that had been put forward by the plaintiff throughout both in the contents of suit notice as well as in her evidence as P.W. 1. Under the circumstances, this Court is of the view that the reasons given by the lower Court for holding that Ex. A1 is not supported by consideration, cannot be upheld and as such the decision arrived at by the lower Court requires to be reversed and is hereby reversed. The judgment and decree of the trial Court are set aside. The suit is decreed with costs. The appeal is allowed with costs.