

(1980) 11 KAR CK 0011
In the Karnataka High Court
Case No : RSA 806/74

Madegowda

APPELLANT

Vs

Madegouda and Another

RESPONDENT

Date of Decision : 05-11-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Contract Act, 1872 — Section 16

Citation : (1981) 1 KarLJ 174

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

1. This is a plaintiff's second appeal against the divergent findings of the Courts below. Parties to this appeal will be referred to by the ranks they had in the trial Court.

2. The facts leading to the present appeal may be briefly stated as follows:

The appellant-plaintiff was the son of the maternal nephew of Defendant-1. He lost his parents in his child-hood. He first lost his father and some years thereafter his mother. When he came of age, he made enquiries regarding the properties left by his father and learnt that the suit property was one of such properties which was in the possession of the 1st defendant. The plaintiff desired that he be put in possession of the property but was informed that he had no right in the suit property as the same had been sold by him by a registered sale deed to Defendant-1 (Respondent-1) in this Court. Hearing the same, the plaintiff was shocked and surprised and on further enquiries learnt that indeed there was a sale deed dated 20-1-1958 purporting to be the sale deed under which Defendant-1 had obtained title to the suit property. The plaintiff further averred that the sale deed was false, void and not binding on the plaintiff: that the plaintiff was born on 3-4-1942 and in support of that assertion produced a horoscope along with the plaint. Therefore, it was asserted by him that the sale deed was void in as much as he was a minor on the date borne by the sale deed in question. He further averred in the plaint that the 1st defendant had played

fraud and practiced undue influence on the plaintiff. It was stated by him that the 1st defendant took the plaintiff's thumb mark on some document representing that that was connected with some property of the plaintiff; that the plaintiff had not received any consideration under the sale deed; that the suit property was worth nearly Rs. 10,000 while the sale consideration mentioned was only Rs. 2,750; that he did not admit the averments in the sale deed of January 20, 1958; that the alleged sale deed was false and therefore he was not bound by the same and in those circumstances he was entitled to a decree for possession of the suit properties as well as for setting aside the sale deed. The other averments in the plaint as not necessary to be recited here.

4. The suit was resisted by the defendants. The 1st defendant filed his written statement denying that the plaintiff was a minor on the date of the suit sale deed. He further stated in detail the circumstances under which the sale deed came to be executed. In sum and substance his averments were that from the time of the plaintiff's grand-father who were his relatives, plaintiff's father, mother and grandfather were borrowing various sums under different mortgage deeds for necessities and for the purpose of the marriages of the plaintiff's sisters and to wipe out the debts under earlier mortgage deeds and it was in that manner, he came to be in possession of the suit property as mortgagee with possession and that the plaintiff, after the death of his mother was staying with his sisters or friends for a long time in different villages and ultimately came and resided with him and in order to discharge the mortgage debt of the suit property, the plaintiff sold the same to him on 20-1-1958 by the registered sale deed. He asserted that the sale deed was executed by the plaintiff for legal necessity and benefit and for discharging antecedent debts and that was executed when he was major of his own free will and volition and therefore prayed for dismissal of the suit.

5. On such pleadings, the trial Court framed as many as seven issues and after appreciating the evidence adduced on behalf of the plaintiff and the defendants came to the conclusion that the sale deed was liable to be set aside and therefore decreed the suit in so far as it related to the voiding of the sale deed but did not grant the plaintiff the possession of the suit property. The defendants filed an appeal in R.A. 217/73 in the Court of the Addl. Civil Judge, Mysore, and the appeal was allowed holding that the plaintiff had not proved his case of fraud, undue influence and misrepresentation, after appreciating the evidence on record, so as to avoid the suit sale deed.

6. It is necessary at this stage to, state that during the pendency of the litigation before the coming into force of the Karnataka Civil Courts Act, 1964, the matter had been taken up in appeal to the District Judge who had remanded the matter for fresh consideration after holding that the plaintiff was not a minor at the relevant point of time, viz., 20-1-1958. This finding of the learned District Judge, Mysore, came to be confirmed in MSA. 157/1966 by this Court Therefore, that aspect of the case thereafter had not survived for consideration.

7. Before me, Sri M.S. Gopal, learned Counsel for the appellant has urged only two grounds and they are:

(i) That the lower appellate Court was in error in setting aside the conclusions of the trial Court on the question of fraud, undue influence and misrepresentation in as much as the lower appellate Court did not take into consideration the proximity of relationship the first defendant had with the plaintiff coupled with the authority such position gave, to exercise undue influence on the plaintiff;

(ii) That the lower appellate Court was in error in not taking into consideration the fact that there was presumption of undue influence on account of the admitted fiduciary relationship that existed between the 1st defendant and the plaintiff as Creditor and Debtor on account of the debts of the mother, father and grandfather.

8. It is difficult to accept these contentions. Under Order VI Rules 2 and 4 CPC it is for the plaintiff to aver in detail the circumstances of the commission of fraud and the manner in which misrepresentation was made and the circumstances in detail which would constitute the act of undue influence. But, as already summarised, pleadings of the plaintiff were totally wanting in such particulars. Therefore, at no point of time was there any need for the defendant to discharge any burden in regard to any presumption that would arise under S. 16 of the Indian Contract Act. The law in this behalf is well-settled. It is sufficient to refer to the latest decision of the Supreme Court in the case of *Asfar Shaikh v. S. Soleman Bibi* AIR 1976 SC 163. In that case, Sarkaria, J, speaking for the Court has stated as follows:

"While it is true that "undue influence", "fraud", "misrepresentation" are cognate vices and may, in part, overlap in some cases, they are in law distinct categories, and are in view of Order 8, Rule 4, read with Order 6, Rule 2 of the Code of Civil Procedure, required to be separately pleaded with specificity, particularity and precision. A general allegation in the plaint that the plaintiff was a simple old man of 90 who had reposed great confidence in the defendant was much too insufficient to amount to an averment of undue influence of which the High Court could take notice particularly when no issue was claimed and no contention was raised on that point at any stage in the trial Court, or in the first round, even before the first appellate Court."

9. From the above, it is clear that in the absence of pleadings as required under law, the burden was entirely on the plaintiff to prove his case. The only way the learned Counsel for the plaintiff-appellant may urge this Court to take a different view is if he can bring the case within the ambit of S. 16 of the Indian Contract Act. It is clear from S. 16(2) of the Contract Act that in certain circumstances, undue influence can be presumed either on account of the authority the defendant may reasonably exercise on the plaintiff or on account of fiduciary relationship from which it can be inferred that the defendant had gained advantage of the plaintiff on that account. The learned Counsel has pointed out

the relationship between the parties. But, from such relationship as being a grand-uncle, it cannot be inferred that the 1st defendant at the relevant point of time exercised any authority over the plaintiff. On the other hand, it was in evidence before the trial Court that the plaintiff, after his mother's death, had lived in different places for nearly a period of five years including places of his married sisters. It was only thereafter that he came and settled down with the first defendant. If the 1st defendant had no control during the minority of the plaintiff after his mother died, it cannot be reasonably said that he would have any control over the plaintiff or any authority over the plaintiff after he had grown up to be an adult.

10. It was next pointed out that on account of the fiduciary relationship between the 1st defendant and the plaintiff, the defendant took undue advantage and purchased the suit property for a price far less than the market value and therefore the lower appellate Court was in error in not presuming that there was undue influence. The learned Judge of the lower appellate Court has cogently discussed the evidence in this behalf. He has come to the conclusion on the evidence before the Court that the suit property was sold for about Rs. 1,200 less than what would have been its market value. But, he has pointed out that the sale, as evidenced, came about as a result of the plaintiff demanding a fresh loan of Rs. 1,000 to which the 1st defendant agreed only if the property were to be sold to him agreeing to pay the sum of Rs. 725 and wiping out the mortgage debt of Rs. 2,000. He has apparently relied on the evidence that the plaintiff had been paid the sum of Rs. 200 towards the purchase of stamp papers and other expenses connected with the conveyance. Thus, the property though valued at Rs. 2,725 it should be construed as having been valued for Rs. 3,000 having regard to the earlier mortgage debt. The mere fact that that had been purchased for a smaller price than it deserved would not persuade this Court unless the smallness of the price would shock the conscience of the Court. It is apparent that the plaintiff has not been a steady person probably on account of his misfortunes of having lost his parents early in life, but that in itself cannot be sufficient to reasonably infer that he was totally ignorant of the value of the schedule property. In fact, when the attesting witnesses and the scribe were examined by the defendant in proof of Ex-D1, the suit sale deed, no suggestion was made in regard to either under-valuation of the property or in regard to any other aspect of the sale deed. It is seen from Ex-D1 that the sale deed is attested by none other than one of the sisters of the plaintiff and her husband. It is these facts which persuaded the lower appellate Court to reverse the findings of the trial Court. I am inclined to agree with the conclusions reached by the lower appellate Court.

11. Lastly, learned Counsel submitted that the 1st defendant himself had admitted that his brother had brought 4 acres of land for Rs. 4,000 in the same survey number which would put the value of the suit land at Rs. 500/- per acre which value, if accepted as the market value would render the suit property as valuable as Rs. 4,000 and therefore, that circumstance would warrant the

inference by this Court that undue influence had been exercised on the plaintiff by the defendant who had purchased the property for a lesser price. I have already held that the difference in value would not persuade the Court unless it shocks the conscience of the Court. Therefore, it is not possible to give the benefit of illustration (c) to S. 16 of the Contract Act to the Plaintiff.

12. For the above reasons, the judgment and decree under appeal cannot be interfered with and therefore, this second appeal is dismissed.

13. In the circumstances of the case parties will bear their own costs throughout.