

(1914) 09 BOM CK 0006
In the Bombay High Court
Case No : Second Appeal No. 119 of 1913

Purushottam Daji Mandlik

APPELLANT

Vs

Pandurang Chintaman Biwalkar

RESPONDENT

Date of Decision : 01-09-1914

Acts Referred:

Specific Relief Act, 1877 — Section 39

Citation : (1915) 17 BOMLR 157

Hon'ble Judges : Hayward, J;Beaman, J

Bench : Division Bench

Judgement

Hayward, J.—The plaintiff sued the defendant to set aside a sale-deed on the ground of coercion u/s 39 of the Specific Relief Act. The plaintiff stated in the plaint that he was able to write his signature, and that the defendant with the object of getting that signature by force came to his house on the night of the 29th November 1908, and with the assistance of six men forcibly carried him away to the defendant's mandap, severely beat him and made him sign his name on the document. The plaintiff further alleged in his deposition that, on the night of 29th November 1908, he was sitting in his court-yard after taking his supper, when the defendant, who was helped by five other men, at once came up to him, gave him a blow, and asked him to sign a document shown him by defendant; that, on his persisting in refusing to sign it, he was picked up bodily by the defendant and his five comrades and taken to the mandap in front of the house of the defendant which was near by, and was there kicked and struck with blows so very severely that he nearly lost his consciousness; that his wife, who had witnessed from inside her house the assault committed on her husband, followed him when he was removed by the defendant and his comrades, crying for help all the while; that the wife, who was prevented by the threats of the defendant from entering the mandap, finding her husband being mercilessly kicked and struck with blows, cried out from the place where she was standing and advised him to sign the document rather than lose his life on account of the thrashing he was subjected to; that he, thereupon, put his signature to the

document.

2. The defendant's allegation was that, on the night in question, the plaintiff entered his house with the object of stealing this particular document, and that whilst plaintiff was about to run away with a bundle containing this and other connected papers, he was arrested with the help of the defendant's companions.

3. The learned Subordinate Judge held that the plaintiff's story was not proved, and in so doing remarked that "his story as it has been unfolded in his deposition and in the depositions of his witnesses is incredible. I, therefore, come to the conclusion that the plaintiff's allegations regarding the violence used towards him and his having been subjected to severe beating are not proved. The facts show that if plaintiff was subjected to any violence by the defendant it would not have been in the manner described by the plaintiff and his witnesses." The learned Judge then proceeded to consider certain other circumstances leading up to the document in dispute, and came to the conclusion that some other kind of coercion must have been caused in consequence of which the document was signed, and he relied in coming to this conclusion very largely on his disbelief of the counter-story of the theft told by the defendant. He remarked that "the defendant says that plaintiff had entered his house with the object of stealing the document and whilst plaintiff was about to run away with a bundle of papers he was arrested. The defendant's story is that plaintiff and his comrades stole away the sale-deed" but in view of the other circumstances he came to the conclusion that "the defendant's story regarding the theft falls to the ground." The learned Judge, accordingly, gave a decree for cancellation of the document upon these final grounds : "The irresistible conclusion, therefore, is that plaintiff must not have voluntarily signed the document. He must have been made to sign it against his will. Of course, the evidence of violence is not satisfactory. I think the evidence in the case is bound to be unsatisfactory. The defendant is not expected to be so very stupid as to openly practise violence on plaintiff. It must have been done by him privately in his house by enticing plaintiff to come there. Plaintiff must have gone voluntarily to defendant's house with his turban on, and it was there that the document was ready written, and in the presence of the attesting witnesses and the writer plaintiff's signature was taken on that night, and, in accordance with the plan previously laid out, the cry was then raised of theft by the defendant. I have already stated that an exaggerated account of the violence done has been given; that the doctor proved that some violence was used against plaintiff, and it might have been that plaintiff affixed his signature out of fear of further violence. No stronger proof of the violence can be expected in this case. The circumstances warranted above prove that plaintiff must have made his signature to the document under coercion.

4. The learned District Judge on first appeal appears to have taken the same view and confirmed the decision. He did not go into the evidence in detail, but said this : "No doubt the facts may have been a little exaggerated, or the plaintiff may not have been able to substantiate all the allegations made by him, for

reasons which it is not possible to explain, but all the facts and circumstances point to but one conclusion, that the plaintiff's signature on the sale-deed must have been obtained by force and against his will." He then briefly referred to the other circumstances and recorded his disbelief in the story of the theft set up by the defendant. He also appeared to rely on further unconnected circumstances said to indicate the bad character of the defendant.

5. On second appeal to this Court, the contention in substance has been that it was contrary to the procedure prescribed by law to reject the evidence adduced in support of the plaintiff's specific allegations of coercion and to hold on a consideration of other circumstances and a disbelief of the story of the defendant that there must have been some other undefined kind of coercion. This contention has, in our opinion, been shown to have been well founded by the detailed extracts just recited from the pleadings and the judgments. They have indicated, beyond doubt, that the specific allegations were that the plaintiff was carried off openly by force and severely beaten and under violent compulsion made to sign the document. These allegations were all disbelieved and the surprising result was arrived at, on a consideration of other circumstances, that the plaintiff must have been deceitfully decoyed into going quietly and privately through fear of possible violence, and made to sign the document. These other circumstances have not been clearly arranged either in the rambling judgment of the learned Subordinate Judge or in the brief references of the District Judge. But they would appear so far as we have been able to gather as follows.

6. The plaintiff originally obtained a sale-deed of the property in dispute for Rs. 900 odd on the 17th of February 1905, but was alleged by defendant to have entered at the same time into an oral agreement for resale, which was alleged to have been reduced subsequently to writing about June 1905. The allegations as to the resale agreement were held not proved. Earnest money said to have been Rs. 400 was alleged by defendant to have been paid in respect of this agreement of resale on the 24th of April 1908. This allegation also was held not proved. Then plaintiff executed the resale-deed according to his allegation under the coercion of the defendant. The stamp paper for that document was dated the 29th of April 1908, and Rs. 500, balance of purchase money was alleged to have been paid on execution of the document between the 17th and 21st of September 1908. The plaintiff denied execution as on those dates but he made an application to the Registrar alleging that a false deed had been executed, and would be presented for registration, dated the 29th of October 1908, and he explained that with a view to bringing that false deed to light-whatever he meant by that-he passed two further resale-deeds to his father-in-law for no consideration on the 10th and 17th of November 1908. Then plaintiff received some slight bruises or scratches in the events which have been the main subject of this trial, described by the one side as the forcible execution and, on the other, as the attempt to steal the resale-deed on the 29th November 1908. Criminal proceedings were instituted on either side but ended eventually in mutual failure and the resale-deed was registered in November 1909. It is not for us to

substitute our view of what those circumstances really indicated for the conclusions of those charged with the responsibility of determining the facts but it is clear from a consideration of those circumstances and the observations thereon in the judgments that they were regarded as establishing no more than a suspicion or mere probability that the plaintiff had been deceitfully decoyed into going quietly to the defendant's mandap some time on 29th November 1908, and there privately been made to sign the document by some kind or other of undefined coercion. Now such a suspicion or mere probability would, in any case, not have been sufficient to support a plea of coercion as pointed out by the Privy Council in the case of *Motee Lall Opudhiya v. Juggurnath Gurg* (1836) 5 W.R.P.C. 25 quite apart from the consideration that it was not *secundum allegata et probata*, namely, that it was not the case set up by the plaintiff nor was it supported by the evidence on which he relied but depended on other circumstances" coupled with doubts entertained as to the veracity of the defendant by both the learned Subordinate Judge and the District Judge and coupled with aspersions on the character of the defendant relied on, contrary to the provisions of Section 52, Indian Evidence Act, by the learned District Judge. The rule mentioned by the Privy Council in the case of *Motee Lall Opudhiya v. Juggurnath Gurg* (1836) 5 W.R.P.C. 25 would, in fact, appear to be the basis of the rule that where fraud or coercion are alleged detailed particulars must be given in the pleadings, a rule now expressly laid down in Order VI, Rule 4, of the Schedule to the Civil Procedure Code. When particulars have been given, the parties should be strictly confined to that state of facts as indicated by the Privy Council in the cases of *Eshenchunder Singh v. Shamachurn Bhutto* (1866) 11 M.I.A. 7 and *Abdul Hossein Zenall Abadi v. Charles Agnew Turner* ILR (1887) 11 Bom. 620. The necessity of strict adherence to these rules and of special care in framing an issue on a plea of fraud-the remarks apply equally to a plea of coercion-was insisted on strongly by Chandavarkar J. in the case of *Balaji v. Gangadhar* ILR (1908) 32 Bom. 255. The present case is, in our opinion, a marked instance of the dangers of departing from those wholesome rules. Particulars of the coercion alleged were here given in the plaint and further elucidated in the plaintiff's deposition and supported by definite witnesses to the effect that there had been open and violent abduction and severe beating to procure signature of the document. These particulars were wholly rejected and the evidence held to be entirely false. Nevertheless a vague and materially different kind of coercion was held to have been probable on other circumstances and doubts as to the veracity and good character of the defendant to the effect that there had been secret abduction and probably some force or threat of violence to procure signature of the document and this was rendered possible by a loose issue as to the force and violence framed by the learned Subordinate Judge and a looser issue still as to title to cancellation of the document framed on appeal by the learned District Judge. We are, therefore, of opinion that there was substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law and that we must, therefore, reverse the decrees of the lower Courts.

7. With regard to the subsidiary contention raised on this second appeal, namely, that the plaintiff was not entitled to sue as he had transferred the property in suit to his father-in-law and others and, therefore, had no interest in maintaining the suit, it has been urged in reply that he was in danger by reason of the document in suit, on the one hand, of being sued by the defendant for the purchase money in case the defendant should be ousted from possession, and, on the other hand, of being sued by his father-in-law or other vendees for damages in case the sale to them should be set aside at the instance of defendant. It appears to us that this reply must be allowed as indicating sufficient interest in the document to support the suit. We are fortified in that decision by a consideration of the remarks in the case of *Kotrabassappaya v. Chenvirappaya* ILR (1898) 23 Bom. 375.

8. We must, however, for the ether reasons already stated, dismiss the suit with costs throughout and reverse the decrees of the lower Courts.

Beaman, J.

9. I have only come to the same conclusion after the most anxious consideration of all the arguments addressed to us in support of the decree appealed against. No Court has been more jealous, and with rare exceptions, more consistent, in the construction it has always put upon Section 100 of the Civil Procedure Code, and I should be sorry to think that any decision of mine might be used to let in appeals against what are really decisions upon questions of fact, however gross or inexcusably wrong such decisions might appear in the eyes of this Court. But it certainly does seem to me a strange thing that a plaintiff, who comes into Court alleging fraud or coercion, in respect of which the law, as is well-known, requires him to give particulars, should give every particular which must be within his own knowledge, and, after being disbelieved upon every material one of them, should yet be given relief. It is here that I think this is a very special case and distinguishable from those innumerable cases in which the decision of the Court below is arrived at upon a question of fact and does not fall within the contemplation or the language of Section 100, for, although in appearance, as Mr. Rao has strenuously contended, the finding of both Courts is a finding of fact, taking this form that the plaintiff was coerced into signing the document which he now seeks to have cancelled, that will be, I believe, found on analysis not to be really a finding of fact which binds or ought to bind this Court, for, in all such cases, it does seem to me that where the fraud or the coercion alleged must, by law, be supported by particulars, it is only after the due proof and establishment of those particulars that the Court can find as a fact that the alleged fraud or coercion is proved. I do not think that it is open to a Court to give the go-bye to every material particular alleged, and yet to reach the conclusion which ought only to be reached by those steps. Here, for example, the allegation of the plaintiff is that the coercion was quite open and in view of witnesses. The finding of the Court below is that what coercion there was was done in secret, and that there can be and is no evidence of it. That appears to me then to be a finding

absolutely unsupported by any evidence at all. But that again is a sufficient ground for setting aside what might otherwise be a conclusion of fact. It is quite true that the Court has sought to confirm this conclusion by reference to extraneous and surrounding circumstances which my brother Hayward has fully dealt with. I am not now concerned with any criticism of the Court's method there. I desire to found my conclusion on this point that what was essential to be found before there can be any finding of fact binding upon this Court never has been found, namely, the particulars alleged by the plaintiff, and that what was substituted for them, and was absolutely necessary to be substituted for them before any of the surrounding circumstances could be brought in by way of confirmation, is a finding admittedly, I think, not supported by any evidence at all. Therefore, it does appear to me that this is clearly a case in which there has been an error of law notwithstanding the appearance of the finding of the Court below, or, to put it under another head of Section 100, there is a substantial error in procedure, inasmuch as the Court has found the case required to be made by the plaintiff not proved, and has found another case unsupported in its most essential point by any evidence at all, proved, and so substituted the latter for the former. For these reasons I would concur with the judgment and in the order just pronounced and proposed by my learned brother.