(1910) 02 MAD CK 0013

In the Madras High Court

Ranee Annapurni Nachiar APPELLANT

Vs

Swaminatha Chettiar and Others RESPONDENT

Date of Decision : 18-02-1910

Acts Referred:
Transfer of Property Act, 1882 — Section 6(d)

Citation : (1911) ILR (Mad) 7 : (1910) 20 MLJ 785

Judgement

1. Two points have been taken in this appeal:

(1) that a right to future maintenance is not transferable and that, consequently, the mortgage by the 1st defendant to the plaintiffs of her right to

future maintenance is ineffective ; and (2) that the contract was induced by undue influence.

2. As regards the 1st point, we are of opinion that a right to future maintenance is not an interest in property restricted in its enjoyment to the owner

personally within the meaning of Clause (d) of Section 6 of the Transfer of Property Act. Our attention was called to an observation in Shephard

and BROWNE''S Commentaries on the Transfer of Property Act, 6th edition, page 45, occurring in the Notes to Clause (d) where the learned

authors observe that it seems clear that a widow''s right to future maintenance cannot be made the subject of a sale or other transfer by her since it

exists for her personal benefit only, and they further observe that it may be doubted whether she could lawfully transfer her interest in property

allotted to her for her maintenance. In the two cases, however, which the learned authors cite with regard to the latter observation, the question

was one of the right of attachment with reference to the provisions of Section 266 of the Code of Civil Procedure. We do not think that a right to future maintenance is property within the enabling words of Section 6 of the Transfer of Property Act, or an interest in property restricted in its

enjoyment to the owner personally within the meaning of Clause (d) Cf. Asad Ali Molla v. Haidar Ali; (1910) Cri.L.J. 130 : 14 C W.N. 918.

Consequently, as it seems to us, this question must be considered apart from the provisions of the Transfer of Property Act. The fact that the

transfer is not recognized by the Transfer of Property Act is not conclusive on the question of its validity. See Palaniappav. Lakshmana and Ors.

ILR (1893) M. 429. As regards the cases there is, so far as we know no authority on the point, except an observation in Bhyrub Chunder Ghose

and anr. v. Nubo Chunder Gooho and Anr. (1866) 5 W.R. 111. where the question for determination was whether a widow''s s right to

maintenance could be sold in execution of a decree; an observation by West J. in Narbada Bai v. Mahadeo Narayan, Kashinatt Narayan &

Shama Bai ILR (1880) B. 99 at p citing Bhyrub Chunder Ghose v. Nubo Chunder Gooho (1866) 5 W.R. 111., Mussamat Duloor Kunwar v.

Sunjeev Singh and Ors. (1867) 7 W.R, 311, and Monesur Doss v. Maharajah Kishen Protab Sahu and Anr. (1875) 23 W.R. 427 which were

also cases of attachment. As regards the right to attach, the question is now governed by Section 266 of the Code of Civil Procedure. The

enactment in the CPC that a right to future maintenance should not be liable to attachment is presumbly based on grounds of public policy. Section

266 was enacted in the same year as the Transfer of Property Act. It may be that voluntary alienations of rights for future maintenance should be

prohibited as well as the taking of such rights in execution. The Legislature have not thought fit to prohibit them. We are not prepared to say that, at

any rate where, as here, the amount payable is subsequently fixed by agreement or by decree, a widow''s right to maintenance from her late

husband''s estate is inalienable.

3. As regards the 2nd point, the question must be considered, not with reference to doctrines of equity, but with reference to the amended Section

16 of the Contract Act only--see the judgment of the Privy Council in Dhanipal Das and Anr. v. Maneshwar Bakhsh Singh ILR (1906) A. 570. In

the case before us, the rate of interest payable under the deed on the advance of Rs. 1,500 is 100 per cent. The principal and interest are to be repaid in a year, and in default of payment interest on principal and interest at compound rate at 1 p. c. a month with 6 months'' rests is payable.

The fact that the bargain was a hard one is of course no ground in itself for granting relief, and urgent need of money on the part of the borrower

does not of itself place the lender in a position to "" dominate his will"" within the meaning of Section 16 of the Contract Act as amended in 1899--

see Sundar Koer v. Raishan Kishen ILR (1906) C 150. The question is:-""Were the relations between the parties such that one of the parties was

in a position to dominate the will of the other ?"" We think "" relations "" means not only the personal relations but the circumstances in which the

contract was entered into. Here we have a contract between a money-lender and a widow entered into for the purpose of enabling the widow to

establish her right to maintenance. The widow''s evidence, which does not seem to have been shaken in cross-examination, was that she was in a

poor state when she executed the document, and that her husband died ten years before and that she had no means for maintenance in the interval.

The transaction was, no doubt, completed through a vakil who, in a sense, may be said to have advised the widow, but the fact that she acted

under advice does not, in our opinion, preclude her from asking for relief on the ground that the contract was induced by undue influence, or the

Court from exercising the jurisdiction given by Section 19-A of the Contract Act. Although it is no longer open to us to deal with this case on

equitable grounds, apart from the statute, the cases decided before the amendment of the Contract Act may be referred to as throwing light on the

question as to what circumstances will give rise to relations which place one party to a contract in a position to dominate the will of the other party.

We do not propose to discuss all the authorities cited in argument. We need only refer to the decisions of the Privy Council in Rajah Mokkam Sing

and ors. v. Rajah Rup Singh and others ILR (1893) A. 352 before the amendment of the Contract Act and to Manesher Baksh Singh v. Shadi Lal

and others ILR (1909) A. 386 since the amendment of the Contract Act where agreements were held to be not enforceable. The facts of the

present case, it seems to us, raise a case for relief at least as strong as those in the cases to which we have referred.

4. We hold then, on the evidence, that the plaintiff was in a position to dominate the will of the defendant. We also hold that the bargain, on the

face of it and on the evidence, was unconscionable. We think Illustration (c) to Section 16 of the Indian Contract Act applies and not illustration

(d). Under Sub-s. 3 of the section the burden was on the plaintiff to prove that the contract was not induced by undue influence and, in our

opinion, he has failed to discharge it.

5. We modify the decree of the Subordinate Judge and give the plaintiff a decree for the amount of the advance with interest at 24 p. c. per annum

from the date of the bond to the date fixed for payment, and with further interest at 6 p. c. on the total amount due from the date fixed for payment

to the. date of payment. The mortgage will stand.

6. Payment will be made within three months from this date. The parties must pay their own costs throughout. We appoint a receiver by consent.

7. [See on the first point Tara Sundari Debi v. Sarodh Charan Banerji (1910) Cri.L.J. 146.ï¿½Ed.]