
(1944) 12 PRI CK 0004

In the Privy Council

Case No : Privy Council Appeal No. 54 of 1941

Rarnchandra Jivaji Kanagoand another

APPELLANT

Vs

Laxman Shrinivas Naik and another

RESPONDENT

Date of Decision : 04-12-1944

Acts Referred:

Citation : (1945) AIR(PC) 54

Hon'ble Judges : Madhavan Nair, Lord Goddard, Lord Russell of Killowen, JJ.

Advocate : Harold Shephard, A.Ghaffur, P.V. Srtiba Row, J.M. Parikh, for the Appearing Parties.

Judgement

Sir Madhavan Nair, J.

This is an appeal from a decree dated 17th March 1937 of the High Court of Judicature at Bombay, which reversed a decree dated 23rd April 1932 of the Court of the First Class Subordinate Judge of Belgaum and dismissed the plaintiff's suit. The question for determination in the appeal is whether the plaintiffs' (appellants') suit for recovery of possession of the suit properties is barred by Art. 91, Limitation Act, 1908 (Act 9 of 1908). This article prescribes a period of "three years" for a suit "to cancel or set aside an instrument not otherwise provided for" and time begins to run "when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him." The table given below shows the relationship of the parties to the suit who are members of a Hindu family descended from one Balaji Kanago:

Balaji had two sons, Annaji 1, Ramchandra 1. As found by the High Court they separated in 1865. The elder, Annaji, died leaving a son Tammaji. The suit giving rise to this appeal was instituted by plaintiffs 1 and 2. Ramchandra 2 and Annaji 2, the two sons of Jiwaji who was the son of Tammaji, against respondent 1 Laxman who was defendant 1, and his minor son Raghavendra, respondent 2 who was defendant 2. It was alleged in the plaint that the suit properties belonged to Appaji, son of Tammaji by Tungabai, that Appaji died without leaving surviving him either a widow or any issue, that on his death his mother Tungabai

succeeded to his properties, and that on her death the plaintiff's as the nearest reversioners to Appaji were entitled to the properties in the suit. Tungabai died in 1926 and the suit was instituted in 1927.

Defendant 1 is the husband of a sister of Appaji named Shakuntalabai alias Akkubai deceased, and defendant 2 is their son. In the joint written statement which they filed, they stated that the plaintiffs were adopted by Ramchandra 1 in the genealogical table, that defendant 2 was adopted by Tungabai after the death of Appaji, and that he was therefore a nearer heir to Appaji as he became his brother by Tungabai's adoption. As regards this plea, it may be stated at once that the Courts in India have held that Jiwaji was not the adopted son of Ramchandra 1. It would therefore follow that the alleged adoption of defendant 2 was in law invalid for the reason that in the presence of the plaintiffs, the grandsons of Tammaji, his widow had no power to make any adoption to him. These questions are not now before the board.

The defendants contended further that Appaji had made a gift of the suit properties to his sister Shakuntalabai by a deed of gift dated 24th May 1915 that she left the same to her son defendant 2 by her will dated 16th November 1920 which she had made before she died on 19th November 1920 and that defendant 1 as the guardian of his son came into possession of those properties. The plaintiffs met this plea with the case that Appaji was induced to execute the deed by the undue influence of defendant 1 and his wife Shakuntalabai and that therefore the gift was invalid. Lastly, the defendants pleaded that the plaintiffs' suit was barred by limitation. Issues 5, 6 and 9 which are as follows, relate to the validity of the gift set up by the defendants and their plea of limitation.

"Issue (5) Is the gift by Appaji to Shakuntalabai proved ?

(6) If so, do plaintiffs prove that it was brought about by undue influence ?

(9) Is the plaintiffs' suit in time ?"

On the above issues, the Subordinate Judge found that the gift was proved, but that it was not proved that it was made by Appaji "voluntarily" within the meaning of S. 122, T. P. Act (Act 4 of 1882) which says

"gift is the transfer of certain existing movable or immovable properties made voluntarily and without consideration.....;"

that it was proved that it was caused by the undue influence of defendant 1, exercised upon Appaji, that it was void, that Art. 91, Limitation Act, did not apply and that the suit was in time under Art. 141 which prescribes a period of 12 years for a

" like suit" by a Hindu or Mahomedan entitled to possession of immovable properties on the death of a, Hindu or Mahomedan female from the time when the female dies."

"Like suit" in the article means a suit for recovery of immovable property. In the

result, the Subordinate Judge gave the plaintiffs a decree for possession of the suit properties with mesne profits and costs. The learned Judges of the High Court held that the gift was brought about by the undue influence exercised on Appaji by defendant 1 and also by Shakuntalabai, but they held differing from the Subordinate Judge that it was made "voluntarily"

"as Appaji may have probably executed the deed "voluntarily" in the sense that he expected to die and wished to benefit his beloved nephew"

though in doing so, he acted under the influence of his sister and her husband. As the transaction was, in their view, voidable and not void, they held that Art. 91 applied to the case and time began to run against Appaji who was aware of the character of the transaction from the date of the document, viz., 24th May 1915 and that the suit was barred as it was brought beyond three years from that date. They also held that S. 10, Limitation Act, also relied on by the plaintiffs would not apply to the case. In the result, they allowed the appeal and dismissed the plaintiffs' suit with costs.

Having regard to the findings of the High Court which their Lordships find no reason to reject, the main question for determination before the board, as stated already, is whether the suit is barred by Art. 91, Limitation Act. If the deed of gift is a void transaction no question of cancelling, or setting it aside, would arise, but if it is only a voidable transaction, that is, a transaction valid until rescinded, then the necessity to set it aside is obvious before possession of the property can be claimed. Mr. Parikh's first argument was that as the transaction in question was brought about by undue influence as found by the Courts in India, it was not voluntary and was therefore void as a gift within the meaning of S.122, T.P. Act. This argument cannot be accepted. Though the transaction was induced by undue influence it does not necessarily follow that it was not made "voluntarily." As held by the learned Judges of the High Court, it is clear to their Lordships that Appaji wished to make a gift and acted "voluntarily" in making it. Circumstances brought out in the evidence amply support this view. Appaji was a delicate boy. In 1915, he was only 20. He suffered from epilepsy. Before he made the gift he had been travelling from place to place in search of health and visiting temples. At about the time of the gift he must have realised that his health was not improving and that the prospect of having any issue was becoming more and more uncertain. It was then that he made the gift to his sister in 1915. The opinion of the High Court that he was in no way an idiot or weak-minded intellectually though he was under the influence of his sister and her husband, cannot be controverted in view of the evidence in the case. In these circumstances, their Lordships do not find any sufficient reason to differ from the opinion of the High Court that Appaji made the gift "voluntarily." The transaction is therefore not void, but only voidable as induced by undue influence and requires to be set aside before the properties conveyed by it could be claimed by Appaji or by anyone claiming through him.

Under Art. 91, Limitation Act, limitation begins to run from the time the facts

entitling the plaintiff to have the instrument cancelled or set aside become known to him. It is true that Appaji became insane in or about July 1917, and continued so, until his death in 1923; but he was fully aware of the character of the transaction when he executed the deed in 1915 and before he became insane. On this point the High Court observes as follows :

"It is not shown that any of the facts which might have entitled him (Appaji) to have the gift cancelled were unknown to him-either his relationship with Laxman and Akkubai which gave them an opportunity of dominating his will, or the effect of this gift on his family and himself."

Their Lordships agree with this view. In this connexion reference may be made to the decision of the Board in ("34) 21 AIR 1934 PC 130: 9 Luck 178: 61 IA 224 : 149 IC 480 (PC), Someshwar Dutt v. Tirbhawan Dutt where it was held that time runs from the date of the knowledge and not from that of the removal of the undue influence. In that case it was held by their Lordships that "the plaintiff not being of weak intellect was aware of the character of the transaction at the date when it was entered into" and that time began to run from that date. It follows therefore that, in this case, time began to run against the plaintiff from the date of the gift and that their claim was barred by limitation at the date of the suit.

It was also argued by the learned counsel for the appellants that, inasmuch as the properties in the suit were obtained by undue influence, having regard to Ss.88, 89 and 95, Trusts Act, (Act No. 2 of 1882), the donee and her successor, defendant 2 should be considered to be holding the properties, as if they were "trustees" of the same and the suit to recover their profits will not be barred by time, having regard to S. 10, Limitation Act, which says :

".... no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his, or their hands such property or proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time."

Their Lordships do not think it is necessary to examine this argument beyond saying that as S. 10, Limitation Act, applies only to a case of property which has become "vested in trust for a specific purpose" which certainly is not the case here, that section can have no application to the present case. For the above reasons, their Lordships would humbly advise His Majesty that this appeal should be dismissed, but without costs as the respondents have not appeared before the Board.