
(1937) 10 MAD CK 0018
In the Madras High Court

Santhappa Rai and Others APPELLANT
Vs
Santhiraja alias Kanthu Shetty and Others RESPONDENT

Date of Decision : 29-10-1937

Acts Referred:

Contract Act, 1872 — Section 16

Citation : AIR 1938 Mad 426 : (1938) 47 LW 714 : (1938) 1 MLJ 676

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—This is an appeal from the judgment and decree of the learned District Judge of South Kanara. The suit by the plaintiffs prayed

for an order to set aside two documents executed by the first plaintiff, Exs. E and F, both of which were executed on the 9th of June, 1928. In

their plaint, they alleged that the execution of these documents was obtained by coercion, undue influence and fraud on the part of the first

defendant. The plea of coercion was abandoned. We are unable to find any finding with regard to fraud by the learned trial Judge and it would

appear that the only ground on which he has decreed this suit is based on undue influence of the first defendant over the first plaintiff.

2. These persons are related. The first plaintiff married twice and defendants 1 and 2 are relations by his first wife. His second wife died in 1918.

She had a daughter who died in May, 1928. It may be mentioned that all the children by the first marriage also died. So the immediate relatives of

the first plaintiff, because he has no brothers and sisters living, are the relatives of his first wife and the relatives of his second wife. It is alleged in

this case that this suit has been instigated by one Kumara Rai who is a relative of the first wife. There is a long history of documents in this case and

it is necessary to deal with them because the unquestionably bear upon the facts. The first document brought to our notice was Ex. A, dated 18th September, 1918, described as a deed of settlement. That document was executed by the first plaintiff and his mother and maternal aunt. It is a curious document but the most important part of it provides that the parties should be protected from the property being lost on account of their foolishness. It goes on to state that the parties thereto shall not alienate the property and they appoint one Manjappa as the manager. On the same day there was a deed of partition, Ex. V, entered into between these persons by which the suit properties were given to the first plaintiff and his mother and aunt. It is stated in evidence that on the 8th May, 1926, Manjappa leased a portion of the suit properties to the first defendant. On the 11th June, 1926, and 13th June, 1927, two promissory notes were executed, Exs. I and II respectively, by P.W. 1 to the first defendant and by P.W. 1 to the first defendant's father-in-law's nephew. Money was advanced under these two promissory notes and it has so been found by the learned trial Judge. That is important because the first plaintiff denied consideration and alleged that these documents were not executed on the dates they purport to be executed but on the 9th June, 1928, the date of Exs. E and F, which are sought to be set aside in this suit. On the 15th June, 1927, by Ex. III, the first plaintiff wrote to the first defendant asking for Rs. 275 which money was paid. By Ex. IV dated 21st August, 1927, the first plaintiff again wrote to the first defendant asking for Rs. 150. On the 12th April, 1927, by Ex. B, a registered deed of settlement was executed by the first plaintiff in favour of his daughter. In that deed of settlement it is alleged that the deed of partition to which it refers was brought about fraudulently and the alienations made by Manjappa are stated to be void. Later in that document however the present plaintiff admits the deed of partition. On the 12th April, 1927, that is, the same day, there was a mortgage by Manjappa to the first plaintiff of some other properties and on the 30th May by Ex. D, the first plaintiff assigned the mortgage. These documents have been mentioned in some detail for this reason that the first plaintiff put himself forward and succeeded in impressing the learned Judge with the view that he was a simpleton unable to look after his affairs. The indications from these documents are entirely the other way. He seems to have been very competent in the management

of his affairs; he executes documents, borrows money and when convenient, he repudiates the document although in the same document he re-

affirms. On the 9th June, 1928, Exs. E and F were executed. The first plaintiff's story about that is that he then being 62 and being weak minded

and suffering from great grief owing to the death of his daughter decided to go on a pilgrimage to sacred places in Northern India and that the first

defendant a shrewd man took advantage of his mental state, said that he would go on a pilgrimage also, induced the first plaintiff to start with him

and brought him to Mangalore and kept him in a temple for a couple of days without any access to others and induced him to execute the

documents Exs. E and F. He states in his plaint that the first defendant induced him to do so by saying that a suit was being contemplated in respect

of his properties and that it was necessary to have some documents executed in order to prevent people intending to sue from taking unlawful

possession and in consequence of this representation the first plaintiff was induced to execute Exs. E and F and a will and two promissory notes.

The learned Judge has found that suits were actually brought later on, though unsuccessfully, by certain claimants to the property. Apart from that

allegation, there is to be found in the plaint no other allegation of undue influence. The 1st plaintiff in his evidence - and he was his only witness -

agreed that he read over the documents before he signed them, that the fair copies were read over to him at the registration office and that he took

no objection on either occasion. His evidence is not that he was brought to Mangalore but he went there and his allegation that he was shut up and

unable to have access to others was not proved. The writers and attestors to the documents were not called. No evidence of his family or of his

legal or medical advisers with regard to his mental state was called. As has been said before, the only witness was himself. But the learned Judge

decreed the suit resting his decision apparently on the following ground. He took the view that the 1st plaintiff was ""a foolish fellow"". He held that

he could read and write Kanarese fairly well and that he thoroughly understood what he was doing. He was much impressed with the recitals in

Exs. A and V, which he says attest the business capacity of the 1st plaintiff in the management of his own affairs beyond any doubt. The recitals in

Exs. A and V amount to this that the 1st plaintiff was incurring debts unnecessarily. It is legitimate comment that if that is to be the standard on

which a man's capability to conduct his affairs is to be based, then a very large number of mankind will come into that category. But it is a strange

proposition that a man can utilise recitals of this sort to his own advantage. If that be so, it would be only necessary for an individual to enter into a

contract with some third party reciting that he was unable to manage his own affairs, that he was non compos mentis, etc., to enable him later on to

defeat his subsequent contracts with other persons. Recitals of this sort have no evidential value. What really influenced the learned Judge

apparently was that these transactions were entered into in a hurry and for an inadequate consideration. He says:

The first plaintiff, who is a stupid fellow, comparatively speaking, and who was afflicted with sorrow at the time, entered into the transactions in a

hurry and when there was absolutely no necessity for his doing so.

3. It seems to me that that is directly in conflict with the warning given by Lord Jessel, M.R., in *Wallis v. Smith* (1882) 21 Ch. D. 266, which is that

where contracts are clearly expressed, the judges should resist the temptation of interfering with them on the ground that they know the business of

the people making the contracts better than the people know it themselves. It has been held with utmost clearness that inadequacy of consideration

alone is not a ground for holding that a contract was induced by fraud or undue influence. In *Tennant v. Tennant* L.R. 2 Scotch App. 6, Lord

Westbury stated the law as follows:

The transaction having been clearly a real one, it is impugned by the appellant on the ground that he parted with valuable property for a most

inadequate consideration. My Lords, it is true that there is an equity which may be founded upon gross inadequacy of consideration, but it can only

be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about, or was the victim of some

imposition.

4. That dictum of Lord Westbury's was approved and applied by the Judicial Committee in *Administrator-General of Bengal v. Juggeswar Roy*

ILR (1877) Cal. 192. In this case it cannot be said that the considerations for Exs. E and F were themselves so grossly inadequate as to raise a

presumption that the first plaintiff did not know what he was doing or that he was the victim of some imposition. The learned Judge does not seem

to take into consideration in this case that there was a definite cloud on the title. Ex. B had been executed and although it is true that the daughter is dead, that document was still in existence. He has found that in fact other persons did bring suits claiming this property. The title is by no means clear. These circumstances alone are enough to explain any difference between the actual consideration and an estimate of what should be the maximum consideration. But apart from that it would seem that the learned Judge has fallen into a further error. In construing Section 16 of the Contract Act, it has been held by the Judicial Committee in *Raghunath Prasad v. Sarju Prasad* (1923) 46 M.L.J 610 : L.R. 51 IndAp 101 : ILR 3 Pat. 279 (P.C.), that an error would arise if the positions to be ascertained in cases of undue influence are put in the wrong order. They emphasise that the first thing to be found is whether the party who is said to have induced a contract was in a position to dominate the will of the other. After that the question arises, has the contract been so induced? On the second consideration arises the question of burden of proof. In this case, in my view, there is no evidence whatever that the first defendant was in a position to dominate the will of the first plaintiff. Who is he? He appears to have been a wife's relation. There is nothing whatever on record in any way to suggest close intimacy with the first plaintiff. All we know is that this transaction took place and nothing else. The learned Judge however finds undue influence but it would seem from a consideration of his judgment that he fell into the very error concerning which Lord Shaw issues a warning in the case above cited. In *Poosathurai v. Kannappa Chettiar* (1919) 38 M.L.J. 349 : L.R. 47 IndAp 1 : ILR 43 Mad. 546 (P.C.), it is pointed out again by the Judicial Committee that:

It is a mistake to treat undue influence as having been established by a proof of the relations of the parties having been such that the one naturally relied upon the other for advice.

5. Lord Shaw goes on to state that it had got to be shown that that influence was undue. I mention this to show the very high degree of evidence that is required because in the case now under appeal there is no evidence of any relationship at all between the parties except the slight relationship by marriage. There is no evidence that the one was able to dominate the will of the other. The whole case is based on the fact that the

learned Judge took the view that this was an improvident contract. He believed the first plaintiff so far as important issues in the case were

concerned and disbelieved the first defendant. That is curious because the first plaintiff who after all was relying on his own evidence in order to

prove his case came to Court with some very important statements which were found to be untrue. Rs. 1,400 was paid to the first plaintiff in cash

as part consideration of this document. He alleged that that money was taken back by the first defendant. That has been found to be untrue. The

promissory notes, Exs. 1 and 2, he stated, were brought into existence on the 9th June, that no consideration passed. That has also been found to

be untrue. It is therefore curious that the learned Judge thought fit to rely on this man's evidence in any shape or form. But it is not necessary to

disbelieve his evidence - which personally I do disbelieve - because I think it is sufficient to say that on his evidence there is no case of undue

influence made out. The only case made out is that he executed the transfer and the lease which may not be to his advantage. On the other hand, in

view of the litigation which threatens these documents, they may well be to the disadvantage of the transferee. That is sufficient to dispose of this

case. I would only add that, from both the documents and the evidence, so far from holding that the first plaintiff is a simple person, I take the view

that he is the exact opposite. He seems to have been very well able to look after himself. It should be observed that two months after the execution

of Exs. E and F, he made avoluntary settlement of the same properties to the plaintiffs 2 and 3 and generally comported himself throughout in a

manner which suggests that he may easily have been trying to over-reach the first defendant instead of the first defendant over-reaching him.

6. For the reasons that I have given I consider that this appeal should be allowed with costs throughout.