

**(1962) 04 AP CK 0006**

**In the Andhra Pradesh High Court**

**Case No :** Letters Patent Appeal No"s. 12 and 13 of 1961

Sathi Sattemma

APPELLANT

Vs

Sathi Subbi Reddy and Another

RESPONDENT

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**Date of Decision :** 20-04-1962

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100  
Contract Act, 1872 — Section 16

**Citation :** AIR 1963 AP 72

**Hon'ble Judges :** P. Chandra Reddy, C.J.;Kumarayya, J

**Bench :** Division Bench

**Advocate :** Ramakrishna Rao, for V. Parthasarathi, for the Appellant; Sankara Sastry, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Kumarayya, J.—These two Letters Patent Appeals are from the judgment of our brother, Srinivasachari, J. in S. A. Nos. 734 of 1956 and 19 of 1957 which arose out of O. S. Nos. 332 and 333 of 1953. The parties to both the suits are the same and are related to each other. Defendant No. 1 is the son of defendant No. 2 who is no other than the plaintiff's father's sister's son. The reliefs claimed in both the suit are similar, to wit, setting aside the deeds executed by the-plaintiff. In O. S. No. 332 of 1953 the plaintiff seeks la set aside the settlement deed dated 2-7-1952 execute by her in respect of a house and in O. S. No. 33 of 195i she seeks to set aside a relinquishment deed dated 3-12-1951 as regards her life interest in two items of property of which one is a site 112 sq. yards in area with a thatched" house thereon in Pentapadu agrapharam and the other is an arable land Ac. 1-64 in extent situate in Polumuru village.

2. The facts, according to the plaint allegations are these:-- Plaintiff was married quite young and in or about a couple of years, she lost her husband. She had not attained puberty by that time. Her parents nevertheless did not choose to get her re-married. Defendant No. 2 was a resident of the same village. By reason of

their close relationship, they had occasions to move freely with each other. Young as they were ere long illicit intimacy tended to develop between them. As 2nd defendant's wife happened to be then in the family way, he asked plaintiff's father who was ignorant of illicit connection between them to permit the plaintiff to go to his house in order to help his wife in her confinement. The father agreed and the 2nd defendant took the plaintiff to his house in October 1940. This further cemented their intimacy. Their relations grew so strong that she could not leave him. The plaintiff's case is -that taking advantage of this position, 2nd defendant got a settlement deed dated 15-3-1941 executed by her in respect of certain properties of hers in favour of his minor son, the 1st defendant. This however gave publicity to their secret relations and the plaintiff's father and her relations gave up visiting her. Cut off thus from all her relatives, she was brought under the influence and complete domination of 2nd defendant who after sometime asked her to execute a power-of-attorney to manage her property so that she need not come out of the house. She accordingly executed a power-of-attorney on 3-12-1951. She did not know then that she was executing a deed relinquishing her rights in the property. The matter did not end at that.

After some time on 18-1-1952 she had purchased a house for a sum of Rs. 2,500/- and it was at a distance of 100 yards from the thatched house where she was put up. The 2nd defendant represented to her that a separate power-of-attorney was required for this upstairs building also. On 2-7-1952, after making her drink to the point of intoxication, he got her thumb impression affixed on a document which was later on registered. The plaintiff did not know that it was a relinquishment deed in favour of defendant No. 1 with regard to her house. A year later, when she intended to make some provision for her brother's daughter, Veeramma, she was told that she had no longer any property which she could dispose of. Then she suspected the conduct of the 2nd defendant and was disillusioned when the copies of the documents were obtained. She then brought the suits.

3. Both the defendants denied the allegations made by the plaintiff. The contention of the 2nd defendant was that the story of illicit intimacy was false, scandalous and defamatory. Plaintiff herself used to come to his house on account of her relationship with a view to assist his family. She had no children and was therefore fond of 1st defendant. On account of her affection, she of her own accord executed the settlement deed Ex. B-1 dated 15-3-1941 in his favour reserving a life interest for herself and making demise of only vested remainder. Several years thereafter, on account of her ill-health and other reasons she required that the 2nd defendant should look after all her affairs, and for that purpose executed the power-of-attorney, Ex. B-2 and got the same registered on 3-12-1951. On that very day, she further executed Ex. B-3 in favour of 1st defendant giving up her life interest in some of the properties covered by the settlement deed dated 15-3-1941 in lieu of Rs. 500/-. This demise was made solely to benefit the 1st defendant. Some time thereafter, she executed Ex. B-4 in favour of 1st defendant in relation to the house that she purchased. It is not

true that the 2nd defendant made her drink and got this settlement deed executed on 2-7-1952. It was her voluntary act. She was fully alive to the contents of the document and it is false to say that she came to "know of the contents later on.

4. On these pleadings, the only vital point at Issue between the parties was whether the relinquishment deed dated 3-12-1951 and the settlement deed dated 2-7-1952 were vitiated by fraud, misrepresentation and undue influence as contended for on behalf of the plaintiff. The parties went to trial on this issue. Plaintiff examined six witnesses and the defendants four witnesses. On the evidence adduced, both oral and documentary the trial court entered a judgment against the plaintiff. On appeal, the learned Subordinate Judge, Eluru differed from the View "taken by the trial court and held that 2nd defendant was in a position to dominate the will of the plaintiff and that the plaintiff executed the documents in question under undue influence. In the result, he decreed both the suits of the plaintiff. But in the Second Appeals, that order was set aside and that of the trial court restored. Plaintiff has therefore come up in appeal on leave granted to her.

5. The first contention raised is that interference in Second Appeal with a finding on a question of fact was not competent under the mandatory provisions of Section 101 C.P.C. and that the appeals on that very ground must succeed. On the other hand, it is argued by the learned counsel for the respondent that there was no material on record whereupon a conclusion could be reached that the 2nd defendant was in a position to dominate the will of the plaintiff and that he brought about the transactions in question taking undue advantage of his position. It was therefore open in Second Appeal to consider whether there was any evidence on which the finding in question is based. It is further contended that the Second Appeal even otherwise involved a question of law, whether the relationship of the parties as paramour and mistress is sufficient to attract the application of Section 16 of the Contract Act. It admits of little doubt that the findings based on no evidence or on inadmissible evidence or in disregard of evidence are within the operation of Sub-clause (I) of Section 100 C.P.C. So also are the errors in inferences of law or wrong application of any provision of law or of any principle of law.

The claim of the plaintiff in both the suits has been that the impugned transactions are vitiated by undue influence, fraud and misrepresentation. While the trial court, on a consideration of the entire "material on record, came to the conclusion that there was no question of undue influence, misrepresentation or fraud played by the 2nd defendant, the first appellate court attached much significance to the fact that the relationship between the plaintiff and 2nd defendant was that of mistress and paramour, that the transactions were far from being in the interests of the lady and they are on the face of it, thoughtless acts on the part of the widow who was young and had a long future and must therefore naturally be deemed to be the product of undue influence and hence

vitiated. It stressed on the fact that there was no evidence of Independent advice having been given to the plaintiff and attached no importance to the fact that the material on record showed that the lady executed the documents with full knowledge of their contents and comprehension of their implications.

6. The question whether in any particular case the transaction was brought about by the exercise of undue influence must be decided upon the facts and circumstances of that case. It is however necessary that the conditions of section 16 of the Indian Contract Act should be satisfied before it may be held that the transactions are a product of undue influence. "Undue influence" has been defined in section 116 thus:--

"(1) A contract is said to be induced by "undue Influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872."

This definition lays down two conditions: Firstly, the relationship subsisting between the parties must be such that one party is in a position to dominate the will of the other and secondly, that the person so placed should have used that position to obtain an unfair advantage over the other. Both the conditions are complementary and not mutually exclusive and hence both together and not each by itself can satisfy the test u/s 16. Sub-clause (2) which provides that a person shall be deemed to be in a position to dominate the will of another is attracted only where the person in sooth holds an authority, real or apparent, over the other or where there is a fiduciary relationship subsisting between the two or where the person with whom the contract is made is in a poor state of mental condition, temporary or permanent, by reason of age, illness or mental or bodily affliction as a result of which he is not in a position to understand the real nature of the transaction or exercise his free will. Under SUB Clause (3) even if a

person is in a position to dominate the will, unless the contract entered into by him is ex facie unconscionable or is proved to be so, the onus shall not be placed on the party to establish that such contract was not made under undue influence.

It follows therefore that to hold a contract as vitiated by undue influence, mere relationship contemplated by this section is of no avail unless that position is proved to have been used to obtain an unfair advantage which may as well be inferred from the nature of the transaction, being unconscionable. That being established, the onus will shift to the person to prove that it was not so vitiated. That is the scope and effect of Section 16 of the Contract Act. This question has received consideration of various High Courts of India and also the Privy Council. It will be sufficient if we refer to some, of the cases in that behalf.

7. In *Santhappa Rai and Others Vs. Santhiraja alias Kanthu Shetty and Others*, while construing section 16, reference was made to *Raghunath Prasad v. Sarjj Prasad* 1924 Mad WN 638 : AIR 1924 PC 60 and *Ponsatliurai v. Kannappa Chettiar* AIR 1920 PC 65 : ILR Mad 546. Referring to the first mentioned case, it was observed 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. Then comes the next thing whether the contract has been so induced. Then would come the question of the burden of proof. The sequence of these questions cannot possibly be altered without a risk of committing legal error. Not only the exercise of influence has to be established but also there should be satisfactory proof of undue influence. The learned Judges cited the following observation of their Lordships of the Privy Council in the second mentioned case;--

"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."

They further observed that an improvident contract cannot be held by reason of that fact alone to be a contract induced by undue influence. Nor can inadequacy of consideration by itself be a ground for holding that the contract was induced by fraud or undue influence. The case, be it noted, stresses on the fulfillment of both the conditions in section 16(1) and rightly so, if we may say with respect. Their Lordships of the Privy Council in *Kali Baksh Singh v. Ram Gopal Singh* 26 MLJ 321 (PC) had to deal with a case where a pardanashin lady had made a gift of one half of the properties absolutely vested in her to the son of her paramour whom she treated with affection from his very boyhood. The deed of gift was sought to be subsequently set aside by her on the ground that she was a pardanashin lady and had no independent advice. The courts below found that the deed was read over and explained to the lady at the time of execution. There was however some difference whether the explanation to the lady was thorough or perfunctory. Their Lordships considered the question whether this defect, if any, in the explanation of the document was material in any manner.

The facts of the case disclosed that the lady has been in the habit for

considerable period of years of managing all affairs, of entering up her accounts and of attending to her business. She was a capable woman of strong will and business capacity and must have been fully alive to the direction of her own intent and well aware of what she was doing. Their Lordships observed that the deed in question which related to a part of her property, in the circumstances of her life, cannot be regarded as an unnatural disposition and the deed must be deemed to be an expression of her deliberate mind and not a product of any undue influence brought to bear upon her and that the case was not obviously within that rule which, in the language of Lord Kingsdown, in *Smith v. Kay* (1859) 7 H.L.C 750 "applies to every case where influence is acquired and abused, where confidence is reposed and betrayed." On the question that she was a pardanashin lady around whom the law throws a special cloak of protection by stressing the necessity of obtaining independent advice, their Lordships observed that the protection cannot be transmuted into a legal disability so that any matter entered into by a pardanashin lady may be deemed to be vitiated with any legal disability and that it was sufficient if the lady had executed the document fully conscious of its contents and realising the full implications thereof. It follows therefore that if she be not a lady, weak and ignorant capable of being deceived by anybody, there is no reason why a document which has been executed by her, after it was read out and explained to her, should be deemed to be tainted.

8. How we refer to another case AIR 1945 8 (Privy Council) where the woman was obviously a victim of undue influence. That was the case of a young lady possessed of stridhana property yielding an income of Rs. 4007- to Rs. 5007- a year on which the entire family depended. She was illiterate and by nature submissive and allowed everything to be managed by her husband. She executed a deed at his bidding without informing herself of the contents. She was told that a lease was to be registered, though in fact a mortgage deed was being executed and that for the benefit of her husband. Their Lordships, on the facts of the case came to the conclusion that there was sufficient material to show that the wife was acting under his influence and was not a free agent. *Narayan Doss Balkrishna Doss v. Buchraj* 53 MLJ 842 : AIR 1928 Mad 6 was a case where the plaintiff who had lost his father when only nine and was brought under the care and protection of his maternal uncle to whom he greatly became attached in preference to his own mother and paternal uncle had, executed a mortgage deed in favour of the creditor of his maternal uncle whose financial position had become precarious. The plaintiff got no personal advantage thereunder. It was held that the mortgage transaction should be set aside as having been executed by undue influence. After discussing the principles regarding the doctrine of undue influence arising out of the existence of confidential relationship Venkata Subbarao, J. at page 852 summed up the principles thus:--

".....To sum up: (1) if there is a relation which gives rise to confidence between the parties and if the person in fiduciary position obtains an advantage where this alone is established and nothing further, the Court gives relief to the party

conferring the benefit, unless the other party shows that he did not avail himself of the confidence which subsisted between the parties. The burden is, therefore, upon him and, if he does not discharge the burden, the plaintiff succeeds, (2) when there is a third party involved, the position is not dissimilar. If it is shown that he was aware of the existence of such confidential or fiduciary relation, he is under the same disability as the party who occupied the position of confidence; that is to say, the Court gives relief to the plaintiff without demanding proof of fraud, or imposition or any specific act of undue influence."

In *Shivgangawa Madiwalappa Vulavi Vs. Basangouda Govindgouda Patil*, the above principle of equity which the fiduciary relationship of the parties would invoke was made applicable to the relationship of paramour and mistress also. Therein a young widow who had inherited her brother's property and had none to look after her or give any disinterested advice, quarrelled with her husband's brother who had come and lived with her for sometime and was appropriating her income. During that quarrel she was thrown out of her property. One *watandar patel* came to her succor and through his influence and assistance she recovered back the property, Then the *patel* managed to live with her in a state of intimacy and obtained from her a gift of all her property. Then he drove her away, it was held that in the circumstances of the case, the gift must be presumed to have been obtained under undue influence. The learned judges referred to the principle of equity and observed that the court of equity imposes upon the grantee the burden, if he wishes to maintain the contract or gift of proving that in fact he exerted no influence for the purpose of obtaining it and that this rule of equity is not restricted to cases where strictly or technically fiduciary relationship is established but extends to other cases also and that the relationship of paramour and mistress may be included in such cases if the party obtaining the benefit is in a position to dominate and influence the will of the other.

9. This is the state of law on the decided cases. That is so because law and equity have always for their aim justice and fair play. Exploitation of the weak and unwary, they greatly detest. The feeble minded and the innocent victims are always within their protection and on proof of exercise of undue influence are relegated to their original position. Fraud vitiates all transactions. Cases of misrepresentation and undue influence are zealously guarded against. So then, if it be shown that a party exercised his dominance over the mind and will of the other undermining substantially latter's independence of judgment and obtained undue advantage thereby, the aggrieved party whose will is thus overborne is entitled to relief against the effects of such undue influence. But such undue influence must be satisfactorily established. It may be proved by evidence, direct or circumstantial. Circumstances of the transaction and relationship of the parties may even shift the onus of proof. But there should be material on which the court is satisfied that undue influence as defined in section 16(1) of the Contract Act has been exercised.

It is necessary that not only such relationship should be found to be subsisting between the parties as to leap-to the inference that one party is in a position to dominate the will of the other but it is also necessary that this position must have been used to obtain an unfair advantage over the other. That such an influence has been used may sometimes be apparent on the face of the transaction. The transactions with persons of mental deficiency or bodily and mental infirmity have indeed to be judged with scrupulous care. The considerations whether the transaction is one which a right-minded person might be expected to do, or whether it is improvident so as to suggest that the donor was not a master of himself or was of such a nature where legal advice was necessary or whether the intention of making contract originated with the executants must of course weigh with the court in judging whether they are a product of undue influence. It cannot however be laid down as a rule that the transactions with a woman must necessarily be deemed to be vitiated by undue influence. There is no reason why if a transaction has been fully explained and the lady after understanding its implications voluntarily executed the document, the transaction should not be given effect to. The parties are better judges of their own interests and when they made a contract with full comprehensions of their nature and impact, there is no reason why the sanctity of their promises should be allowed to be violated. It is the vitiated contract alone which is liable to be interfered with. As already observed, the fact that they are vitiated must be established in some manner or other to the satisfaction of the court.

That being the case, when we judge the material on record, it is difficult to agree with the appellant that the transactions were vitiated. The first appellate court laid undue stress on the fact that there was great intimacy between the 2nd defendant and the plaintiff and was moved by the consideration that the fact that her settlement resulted in the extinction of her right and interest in some of the properties is sufficient to hold that the plaintiff's transaction was vitiated unless it was proved that the plaintiff had independent advice for the transaction, As already pointed out, that cannot be the correct position in law specially when the transaction was not of a complicated nature and the lady executed the deed voluntarily having fully understood the implications of the transaction. It is significant that as regards Ex. B-1, she herself has admitted in evidence that she willfully executed the deed on account of her love to 2nd defendant and that she in fact wanted to benefit him. In view of this clear statement, it cannot be said that a transaction voluntarily entered into with full knowledge of its implications is open to question or review.

There is nothing unconscionable in the transaction either. She did not by this settlement part with the property during her lifetime. What she had demised under this document was only a vested remainder, she having reserved life interest in herself. She was a widow and had no children. Not only her close intimacy with 2nd defendant but also the natural relationship with him had engendered in her real affection for his son. If she had taken a fancy for that young boy she having no son and expecting none in future and had given him a

vested remainder without affecting her own right of enjoyment throughout her life, that cannot be said to be an unnatural or Improvident act. That this was her voluntary act is also clear" from her subsequent conduct. She did not take any steps to avoid that transaction for a period of more than 13 years. No doubt, one of the witnesses P. W. 5, says that only a few months later, when she was asked why she had settled this property she told him that she was defrauded. But this statement does not appear to be correct. If it were so, there is no reason why this act was left unchallenged by her for a period of 13 years. It cannot be presumed that if the plaintiff had unwillingly made settlements, her parents or brothers would have Kept quiet.

It appears from the record that plaintiff herself was a plaintiff woman and was acquainted with business ways. She used to manage her lands and collect rents, used to keep income with her and purchase lands with the same. She invested her money in several ways. She purchased lands, she advanced loans to several persons on promotes or on pledge of jewels; she even obtained decrees against some of her debtors by filing suits against them as would appear from the recital in Ex. B-2. She sold jewels. She sold lands for purchasing house property. She had attended Sub-Registrar's office and executed two sale deeds in favour of Subbamma and Veeramma. Thus she entered into various transactions independently. If at all she was at any time assisted by the 2nd defendant, she does not complain that he ever cheated her in those transactions. All these instances show that she was a person of strength of will and business mind and not one who was unfamiliar with the business ways or could be easily led away. Even with regard to Exs. B-2 to B-4 there is ample evidence that she executed them voluntarily in full possession of her senses having understood the implications of those transactions.

The scribe and the attesting witness deposed to the same. The scribe is ancient, well known to the plaintiff and has no motive against her. There is no reason for him to speak falsehood. No motive has been attributed to the attesting witness. Ex. B-2 is a power-of-attorney executed in favour of 2nd defendant. That was executed on account of her indifferent health and also other reasons set out in Ex. B-2. Ex. B-3 is the relinquishment deed. This document relates to a portion of the property in Ex. B-1. While Ex. B-1 dealt with Ac. 1-64 of land in Polamuru, Ac. 2-05 of land in Pentapadu and Ac. 1-00 of Kaspa Pentapadu and two plots of 112 sq. yards and 700 sq. yards of sites in Pentapadu agharam with a thatched house in 112 sq. yards, under Ex. B-3 all that she gave up was her life interest in only Ac. 1-64 of Polamuru land in East Godavary district, which is far off from her place and a small plot of 112 sq. yards. In the other lands she retained her life interest intact. Even this interest that she alienated under Ex. B-3 was not wholly without consideration though it may not be adequate. It was for a sum of Rs. 500/-. The reason why she had alienated or settled this property can be ascertained by the recitals in the document itself. It was for the benefit of the minor to enable him to augment his resources and pursue his studies.

Having regard to the need expressed therein, it is not improbable or unnatural that for the sake of the education and benefit of the son of 1st defendant, she might not have chosen to relinquish her rights in a small portion of her property. That this document as well was voluntarily executed by her is obvious from the statements of the scribe and the attesting witness. Both the documents in fact were written at her instance. D. W. 2 has spoken to the fact that she told him that she was finding It difficult to collect cist etc., and so a power-of-attorney was to be executed in favour of 2nd defendant and that she also stated that a relinquishment deed in favour of 2nd defendant's minor son, 1st defendant, should be written and she further told that she had already received Rs. 500/- there for. That this was her voluntary act is corroborated by her subsequent conduct. P. W. 3 who was her tenant deposes that he executed a rent deed in 1952 in favour of 1st defendant who was under the guardianship of the 2nd defendant with the consent of the plaintiff for Rs. 30/-. That clearly establishes that the plaintiff not only was aware of the execution of Ex. B-3 but had acted upon It. inner-Wise there was no need for her to allow the rent deed lo be executed In favour of 1st defendant. Ex. B-3 therefore was clearly a voluntary act of the plaintiff with intent to benefit the 1st defendant.

10. It is significant that both Exs. B-2 and B-3 were duly presented by the plaintiff before the Sub-Registrar and she was properly identified and her thumb impressions were also taken there. Under the provisions of the Registration Act, the Sub-Registrar is required to satisfy himself that the document is duly executed by the party whose signature it bears. It should therefore, be presumed that the Sub-Registrar had taken due care and satisfied himself about it. That apart it cannot be said to be an unnatural or wholly improvident act either. The property covered by this was but a fraction of her estate. She had sufficient property, besides. It was only after taking care to reserve for himself sufficient property she relinquished her life Interest in the property mentioned in Ex. B-3. Thus Exs. B-2 and B-3 were executed voluntarily by me plaintiff with full knowledge of their contents and implications, Her mind or will was not dominated or overborne W the will of the 2nd defendant. She did what she though! prudent and reasonable. That was in fact the urge of her desire and expression of her deliberate will.

Similar is the case with Ex. B4. The theory that Ex. 6-4 was obtained on the pretext that a power of attorney was being executed or that it was obtained after the plaintiff was got drunk and intoxicated is not supported by any evidence. This theory is not consistent with any known facts on record. It is not at least a possible theory. There is overwhelming evidence against it. P. W. 2 is the scribe and D. W. 3 is the attest or of this document who spoke to it. It was written in the Sub-Registrar's office and it was registered there. D. W, 3 attested the document in faith of her statement that it was read over to her and at her request that he may attest it. The witness deposes that the plaintiff affixed her thumb mark in his presence ana that the Sub-Registrar questioned her about it. She expressed her perfect willingness to tie document being registered. The

witness knew the plaintiff from before. D. W. "i the scribe who admittedly was acquainted with her from before says that he wrote the document at the Sub-Registrar's office on 2-7-1952, that the document was read over to her and she agreed to its terms. He says that she was not under the influence of a drink and was in a position to understand what was told to her.

No doubt, the scribe was not present at the time of registration. But that does not make any difference. The theory of intoxication it may be noted does not find support even from the evidence of the plaintiff. Nor can " be said that this demise was an act inconsistent with her conduct and attitude towards 1st defendant ever since 1951. It relates to a house which was purchased under Ex. A-I. What has been conveyed by Ex. B-4 was only me vested remainder in the house and this was quite in Keeping with her policy revealed by Ex. B-I whereunder sh" devised the vested remainder, in all the property that she then possessed. The house is a later addition and she transferred vested remainder even in this property. Circumstanced as she was then, this act does not appear to be an improvident act. As already noticed, there is nothing on record to establish that this act was tainted by undue influence, fraud or misrepresentation. Fraud or misrepresentation there is none which the evidence on record can make out. Undue influence cannot be inferred from the facts and circumstances of the case. No doubt, the plaintiff is said to have obtained knowledge of her being defrauded sometime after Ex. B-4 was executed but P. W. 6 says that she told him of it much earlier. His statement cannot be reconciled with that of the plaintiff and none o" these statements can be accepted as correct in the midst of conflicting testimony.

Our learned brother has discussed the evidence at length and gave reasons why the lower appellate court's order cannot stand. It is obvious from that judgment that the 1st appellate court did not at all come into close quarters with the evidence on record, it failed to discharge its obligatory duty to consider the entire evidence on record. The learned judge was swayed by the only consideration that the proved intimacy with 2nd defendant must shift the onus on to the 2nd defendant and that the latter had failed to discharge this onus in that he did not adduce any evidence with regard to the fact that the lady had independent advice. Curiously enough, he brushed aside the evidence of the scribe and the attest or on the simple ground that they were professional document writers. On any reasonable basis, that by itself cannot render their statements Inadmissible In evidence. Their testimony ought to have been weighed in the same way as the testimony of any ther witness and unless there is something in the State ments which disentitles them to credence there could be no justification of ignoring or brushing them aside, they were in fact the persons who were not only competent but the best witnesses in the case. Their testimony ought to have been scanned with ordinary care and due caution.

It is significant to note that the other attest or had not been called as witness and it was open to the plaintiff to examine him, but she failed to do so. Her

evidence cannot possibly support her contention as has been elaborately discussed by the trial court. Her conduct also is more in keeping with the claim of the defendant than with her own. It is plain that the appellate court's Decision was tainted not only with a wrong approach to the problem but also by the fact that the finding reached is not based on the evidence on record but on certain considerations which are rather conjectural. When it is obvious that there is practically no evidence to support the finding of the first appellate court that the documents in question are a result of undue influence, fraud and misrepresentation it was open in Second Appeal to vacate the order based on that finding. The present appeals are therefore devoid of merit. They are accordingly dismissed. Having regard to the circumstances of the case, there will be no order as to costs.