

(1921) 05 MAD CK 0001
In the Madras High Court

Sethupathi Avergal

APPELLANT

Vs

Kuppusami Iyer and Others

RESPONDENT

Date of Decision : 13-05-1921

Acts Referred:

Citation : 68 Ind. Cas. 352

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J;B. Rajarajeswara, J

Bench : Full Bench

Judgement

Sadasiva Iyer, J.—The plaintiff appellant is the present Rajah of Ramnad, the owner of an ancient Zamindary. He brought this suit to recover

possession with mesne profits for 3 years before suit of the village of Nedumthulasi within the area of his Zamindari which village had been

alienated in three ways in the years 1894, 1895 and 1902 respectively in favour of the 1st defendant (Kuppusami Iyer alias Naganatha Iyer).

Unless all these three transactions are set aside or are nullities it seems prima facie difficult to see how the plaintiff's suit in ejectment and for

possession could succeed, as each of the three transactions gives to the 1st defendant the right to hold possession of the village on the date of this

suit (namely, 30th June 1913).

2. The first transaction was a lease granted by the plaintiff's father, the then Rajah, in September 1894 under Exhibit C. Under this deed, the 1st

defendant was entitled to enjoy the village as lessee for 40 years till the 1st July 1934, that is, till more than 21 years from the date when the suit

was brought and more than thirteen years from the date on which this judgment is pronounced by me.

3. The second transaction was again an alienation by the plaintiff's father in June

1895 under Exhibit I by which the village was gifted outright to the 1st defendant with full powers of gift, sale, etc.

4. The third transaction was an agreement between one Rao Bahadur Venkataranga Iyer (who was constituted the present plaintiff's trustee under a settlement-deed of July 1895 which I shall refer to again later on) on the one side and the 1st defendant on the other side and was made in April

1902. (Besides the Dewan trustee and the 1st defendant, two Nattukottai Chetties, who were the lessees of the whole Zemindary were also

parties to the agreement, but it is unnecessary to refer to them further). That agreement is Exhibit II, The trustee had threatened the 1st defendant

with a suit to set aside the gift deed, (Exhibit I, June 1895). There-upon, the dispute was settled by this agreement, Exhibit II, the 1st defendant

agreeing to hold the village on perpetual lease at half the usual rent and thus altering the gift under Exhibit I (the gift-deed of 1895) with full

ownership right in the village to the gift of a perpetual and heritable and transferable occupancy right on favourable rent.

5. Now, the plaint ignores altogether the first transaction, namely, the 40 years' lease of 1894, attacks the other two transactions as "" not bona

fide,"" as ""fraudulently and dishonestly obtained,"" as due to ""undue influence"" and in several other ways.

6. The defendants (the defendants Nos. 2 and 3 being the sons of the 1st defendant) raised several pleas and the lower Court framed nineteen

issues for disposal. It is curious that no specific issue was raised in respect of the defendants' right to hold the village under the 40 years' lease of

1894 and the liability of the plaintiff's suit filed in 1913 for possession to be dismissed on that short ground, even though the 1st defendant

specifically mentioned the 40 years' lease and relied upon it also in the 7th and 8th paragraphs of his written statement.

7. A few more facts and dates may be here mentioned. The late Raja was born in 1868 and his father died when he was a boy of 4 or 5. Though

he was only a titular Rajah and was for all practical purposes only the owner of an impartible Zemindary estate, the pomp and ceremonials and

the retinue of a Royal Court were kept up in many ways in the Zemindar's residence and the unwholesome atmosphere of hangers-on, favorites,

flatterers, idlers, the Zenana, etc., affected the Zemindar's residence (known, of

coarse, as the palace) and his surroundings and the effects of such influence were too strong on the young man, (the plaintiff's father), notwithstanding that his estate was taken up by the Court of Wards during his minority and his education was conducted in Madras. His mother (the Dowager Rani) had naturally great influence over him. She arranged to have him married to two wives at the same time when he was only 18 or 19 years old and by intrigues and importunities persuaded the Court of Wards to consent to his marriage with one girl and had him married almost simultaneously to the two wives she had selected for him, it being considered a matter of dignity in these aristocratic families that the proprietor should have at least two wives living. He was a young man of extraordinary intelligence. He passed his Matriculation in the first class.

8. The lower Court in dismissing the suit arrived at the following findings (among others) and I shall note them (as far as possible) in the words of the lower Court.

(1). The first defendant was not in a position to exercise undue influence over the late Raja" and "the deed of gift in favour of the 1st defendant was not brought about by the undue influence" and "the gift is valid." (This finding relates to the gift-deed of June 1895, Exhibit I).

(2). The agreement of 1902 between the Dewan Trustee and the lessees on the one hand and the 1st defendant on the other confirming the deed of gift with stipulation to pay half the Poruppu" was "beyond his" (the Dewan Trustee's) "powers" and "not valid." "But in view of the fact that the plaintiff could not succeed unless the gift" (of 1895) "was invalid, the plaintiff is not entitled to any relief by declaring that the agreement" (of 1902) is invalid.

3. "The suit is practically to set aside the deed of gift and agreement and Art. 91 of the Limitation Act is applicable." Vide Raja Rajeswara Dorai v.

Arunachellam Chettiar 19 Ind. Cas. 596,

4. There is no evidence on the plaintiff's side that the late Rajah continued to be under the influence of the 1st defendant after the deed of gift (June 1895) till the date of the deed of settlement (July 1895) under which he appointed Venkataranga Iyer as Dewan Trustee for his son (the present plaintiff). "The limitation, therefore, began to run before the execution of the trust-deed" (July 1895) "and no subsequent circumstance can interrupt

the running of the limitation

9. Besides the above four findings, several other findings on mixed questions of law and fact were recorded by the lower Court, but in the

arguments before us on appeal, neither side advanced any arguments on those questions or contested the lower Court's findings thereon. I need

only say that I agree with the lower Court in its conclusions on these questions for the reasons given in its judgment.

10. I shall now take up the four findings dealt with before us one by one. The first question relates to the allegation of undue influence. The late

Rajah was a parson who by temperament was immoderately extravagant, His emulation and bringing up only tended to increase his natural foibles.

D. W. No. 1 says ""the late Rajah was a very emotional person."" Under the Roman Law, he would be considered as a parson permanently affected

with incapacity to manage his own affairs, solely on the ground of his immoderate extravagance, not because he did not know the consequences of

his actions or was at all weak of intellect. He was in perpetual need of the excitement of being praised for his reckless generosity and continuous

liberality. Shrewd Nattukottai Chetties took advantage of this perpetual need of money even before he attained majority (which was on 3rd

November 1889) and lent him large sums depending upon his generous disposition to repay them several times over after he took possession of

the estate and they were not at all disappointed. The late Rajah was much attached to the 1st defendant, Kuppuswami Iyer, because the latter was

a trusted servant of his mother for several years and he made the 1st defendant his own vernacular Secretary, (Javabnavis), But the 1st defendant

was in no better position to dominate the will of the Rajah than any other person who appealed to his generous instincts and love of pomp, show,

display and fame. I do not think it will be going too far to say that the late Rajah's temperament was such that he courted opportunities for the

display of his reckless generosity. I agree with the learned Subordinate Judge that the story of P. W. No. 8 that the 1st defendant related to the late

Rajah that the late Rajah's mother appeared to the 1st defendant in a dream and told him ""Ask my son and he will grant you all benefit"" and that on

telling this story the Rajah agreed to make the gift is a false story. On the contrary, I believe the evidence of D. Ws. Nos. 1 and 2 who say that on

the 2nd monthly ceremony after the Dowager Renee's death, there was a religious gift of the village by the Rajah accompanied by the pouring of water through the right palm and that the gift deed was written a few days afterwards in consonance with the religious gift, and this is corroborated by the recital in the gift-deed.

11. Where a legacy bequeathed by a Will is sought to be set aside on the ground of undue influence, it is not sufficient to prove that the legatee, was in a position to exercise influence and it must also be proved that the influence was unduly exercised, the burden of proving this latter circumstance being on the party attacking the legacy. Again, as a legacy given by a Will takes effect only after the death of the testator, the testator does not deprive himself of the bequeathed property but deprives only his natural heirs. Hence also Courts do not look with favour on attempts to attack bequests on the allegation of undue influence.

12. I admit that the case of a gift inter vivos stands on a less favourable footing. But it must be remembered in this case that the gift attacked was made on the 2nd June 1895 after the late Rajah had carried on his course of extravagance for more than 51/2 years after he attained majority; after he had been advised before the end of 1894 by the Government to settle his estate upon his eldest son, the present plaintiff (see paragraph 4, of the plaint) and just on the eve of the settlement-deed, Exhibit IV, which was executed one month and six days after the gift deed. The gift now in question, therefore, stands almost in the position of a bequest. Now, if A is said to be in a position to exercise undue influence over B, according to Indian Law (see Section 16 of the Contract Act) A must be in a position to dominate the will of B. If when in such a position of dominance, he uses it to obtain an unfair advantage over B, the transaction brought about by such use is voidable by B. Though the expression "dominate the will of another" is an expression of wide import and though I am aware that Courts do not like to give exact and exhaustive definitions of undue influence any more than they like to give exact and exhaustive definition of fraud, I think the expression undue influence" cannot be properly used unless either, 19 Ind. Cas. 596 : 38 M.k 321: 24 M. L. J. 592, confidence has been, reposed on the person charged (A in our illustration), as where the latter is a solicitor, trustee, guardian, etc., or 33 C.k 778 : 10 C. W. N.

570 : 3 A. L. J. 353 unless the influence of the man A is such that B stands in some sort of respect, awe or fear of him such as a child towards its parent or a pupil towards a spiritual preceptor and so on, so that the idea of displeasing A by a refusal to submit to his wishes puts B in fear of prospective injury to his secular or spiritual welfare and happiness, An ordinary servant and dependent like the 1st defendant could not have had and is not proved to have had any such influence over the late Rajah and it is impossible to hold that the Rajah stood in awe or fear of the 1st defendant's displeasure. On the other hand, the letters, Exhibits E to H, L and N, show that the 1st defendant was a mere servile flatterer and dependant of the Rajah and not a person in a position of authority to dominate the will of the Rajah. He was not in a position of trust and confidence such as a solicitor holds over his client. The numerous cases quoted where a father obtains a gift from his son who had just attained majority or a gosha lady makes a gift to the manager who manages all her affairs and persuades her to believe that the gift made to him is only nominal or a solicitor obtains a gift from his client or a spiritual preceptor from his pupil or a person who is nominally a servant but has really made himself so indispensable to his master for the latter's comforts that the master has really become the servant's servant, have all no relevancy in arriving at a conclusion on the facts of this case. From the evidence, I am clear that the 1st defendant's position towards the late Rajah was not such that the Rajah's volition could be overborne by or could be subjected to the domination of the 1st defendant's will. Undue influence and coercion were not clearly distinguished in the old English Law, and though there is a well-defined distinction now, the two are similar in this respect that their legal effect in making transactions voidable depends on the will of the person subjected to either being influenced to such a degree as to lose its freedom. I do not intend to quote many cases. The only Indian ease which I need quote is Ismail Mussajee Mookerdum v. Hafiz Boo 10 C. W. N. 570 : 3 A. L. J. 353 : 8 Bom. L. R 379 : 16 M. L. J. 166 a passage from which is applied to the facts of this case by my learned brother in the judgment to be pronounced by him. There is an English case Taylor v. Johnston (1882) 19 Ch. D. 403 which was a case not of a bequest but of a gift inter vivos like the present. It was a case where a young

woman of twenty made a gift to a relative with whom she had been residing from her father's death for a period of five months until her own death, and to whom she became greatly attached. It was held that the gift was not invalid. It cannot, in my opinion, be stated in this case that the 1st defendant stood in a fiduciary relation to the late Rajah on the date of the gift-deed, When the late Rajah was 27 years of age and the Rajah's benefactions ranged over wide areas from the Sringeri Mattam in the Mysore Province to wealthy Nattukottai Chetties such a contention seems to me to be extravagant. In *Howes v. Bishop* (1909) 2 K. B. 390 it was held that the doctrine of undue influence could not be invoked in favour of a wife who was influenced by the fact that her husband wanted money and who, therefore, joined in executing a promissory-note, though the Jury found that her signature was procured by the influence of her husband. The case of *Nedby v. Nedby* (1852) 5 De G. & Sm. 377 : 21 L. J. Ch 446, is also instructive. There a deed was prepared by the husband's solicitor and was executed by the wife in the presence of two of the clerks of the solicitor and it was not read over to her. The wife was agitated and distressed and she signed and agreed to sign in a reluctant manner and yet the Vice-Chancellor refused to set aside the deed in the suit brought by her. There is no evidence at all in this case that the late Rajah executed the gift unwillingly or through fear of any unpleasant consequence if he refused to execute it, or even that the 1st defendant made the late Rajah uncomfortable by excessive importunities. I, therefore, agree with the lower Court that the gift-deed of June 1895 is not vitiated by undue influence. This is sufficient for the disposal of the appeal. I may even go further and say that the plaintiff did not even allege that the older lease deed of 1894, Exhibit C, for 40 years' term was invalid and the term of 40 years mentioned therein not having expired, the present suit for possession ought to have been summarily dismissed on that sole ground.

13. I shall now take up the second finding relating to the agreement of 1902. Section 36 of the Trusts Act says that the trustee may do all acts which are reasonable and proper for the protection or benefit of the trust property (subject, of course, to the restrictions contained in the instrument of trust). Section 43 of the Trusts Act says that a sole acting trustee authorised to execute the trusts and powers of the instrument of

trust may compromise, compound, abandon, submit to arbitration, or otherwise settle any claim whatever relating to the trust. The Dewan Trustee

as the sole acting trustee was, therefore, empowered to compromise and compound the claim made by the 1st defendant under the gift-deed

which had been in force for nearly 7 years on the date of Exhibit II. The late Rajah had not set it aside before the date of the settlement deed. The

late Rajah died in December 1903. The suit to set it aside was prima facie clearly barred on the date of Exhibit B and the Dewan Trustee acted, in

my opinion, very prudently in getting the 1st defendant to sign Exhibit B agreeing to pay half the Poruppu. I, therefore, disagree with the lower

Court in its conclusion (for which it gives no reason in its judgment) that the compromise was beyond the powers of the trustee and was invalid.

See as to powers of executors and trustees to compromise. *Houghton, In re, Hawley v. Blake* (1904) 1 Ch. 622: 52 W. B. 505.

14. Lastly, dealing with the question of limitation and assuming for the sake of argument that the gift-deed, Exhibit I, was brought about by undue

influence, Article 91 of the Limitation Act clearly applies to this suit, as the plaintiff cannot obtain possession without setting aside the gift-deed

which is not a void transaction but only voidable. See *Janki Kunwar v. A(sic)t Singh* 15 C.K 58 : *Rafique & Jackson's P. C. No. 99* : 7 Ind. Dec.

624 The limitation period is three years from when the facts entitling the person to have the instrument cancelled or set aside become known to him.

Now the late Rajah who executed the instrument knew the facts perfectly from the very date of execution and hence the cause of action arose at

once in June 1895. I need not say that when once time begins to run it does not cease to run, except under very peculiar circumstances which do

not exist in this case. In June 1888, the gift-deed became unavoidable thereafter through the expiry of three years' limitation period. I do not deny

that undue influence might be set up as a defence by a donor to the suit brought by the donor for possession even after the period of limitation, but;

that is not the case here.

15. It was argued by Mr. Section Srinivasa Iyengar that the cause of action arises only when the undue influence ceases. I considered this question

in a case brought by the plaintiff himself, *Raja Rajeswara, Dorai v. Arun(sic)chellam Chettiar* 19 Ind. Cas. 596 and expressed the opinion that the

cassation of undue influence has no relevancy on the question of limitation unless, of courses it, could be brought under the heading of fraud so as

to attract the operation of Section 18 of the Limitation Act. It was, however, argued that in *Sri Kishan Lal v. Kashmiro* 34 Ind. Cas. 37 their

Lordships of the Privy Council expressed sash an opinion. I do not think there is anything in that case which supports the contention of Mr.

Srinivasa Iyengar The facts there ware very peculiar. A single sentence in the judgment at page 374* is relied on, namely, that time would not

under the circumstances of that particular case begin to run against a widow (defendant) even if she had to bring a suit to set aside the disputed

transaction till her husband brother's influence sewed at his death. She had executed an arbitration agreement under the undue influence of her

husband's brother and she set up the undue influence as a defense and succeeded. But as a mere obiter dictum their Lordships of the Privy

Council said that even if she had sued as plaintiff, she would not be barred. The facts were very peculiar and their Lordships found there was fraud

practised upon her, and that she did not have full knowledge of the facts and the rights arising out of these facts till her husband's brother died.

Thus, even that obiter dictum, was based, not on the ground that the death of the husband's brother and the cessation of his influence was the data

for the terminal a quo of the cause of action under the law, but that it was on the leasing of the undue influence that the real state of facts entitling the

widow to have the instrument cancelled became known to her. (Though the third column of the Article 91 uses tin word ""plaintiff,"" the "" plaintiff

includes his predecessor. See definition given in Section 2 of the Limitation Act). Therefore, time began to run in this case as soon as the facts were

known to the late Rajah The suit is again hopelessly barred even if we take the date of the knowledge of the Dawan Trustee or any of his

successors as the data of the cause of action. In this connection [wish to express with great respect my dissent from the decision in *Tanto v.*

Gujadhar 2 N. L. Rule 98, which has been relied on by Rusto(sic)mji and Mitra (the former at page 327 of his book and the latter at page 1003 of

his book) in their valuable treatises on Limitation that the onus of proof is on the defendant to prove that, the plaintiff's knowledge arose more than

3 years before suit. The analogy of a defendant relying on Article 127 of the Limitation Act against the claim of an undivided coparcener for

partition, which analogy was relied on by Mr. Sreenivasa Iyengar is, in my opinion, entirely irrelevant and misleading. There is not a tittle of

evidence that either the Dewan Trustee, Mr. Venkataranga Iyer, a very capable retired Judicial Officer who was the trustee for 11 years till

September 1906, or Mr. Vanadaraja Sarma a (Deputy Collector) who was the Dewan Trustee after him till May 1908 or Mr. Kista Rao who was

the Dewan Trustee till April 1910 was ever subjected to any undue influence. In the result, I agree with the lower Court that the suit is barred.

16. A very ingenious argument was finally put forward, namely, that the 40 years lease-deed, Exhibit C of 1824, was superseded by the registered

gift-deed of June 1895, that this gift deed in its turn was superseded by the compromise agreement of 1902, and that if the plaintiff is able to set

aside this compromise-deed of 1902 he is entitled to possession as the earlier two deeds had been superseded ones for all, each earlier deed

having been superseded by its successor beyond resurrection. I have already found that the compromise-deed of 1902 is a valid deed. But even

assuming that it is invalid, I cannot accept the argument that the defendant, who is trying to protect his possessory rights, cannot fall back upon his

earlier title-deed if the later title-deed which was intended to supersede the earlier title-deed was found to be invalid or was invalidated.

17. I am clear that if the compromise-deed is set aside, the parties are clearly remitted to their original rights as they stood before the compromise.

The effect of setting aside a compromise brought about by fraud and collusion was considered by their Lordships of the Privy Council in

Khajooroonissa v. Rowshan Jehan 2 C. A 184: 1 Ind. Dec 412 and differing from the Calcutta High Court, their Lordships say that all rights which

were attempted to be settled by the compromise were revived on both sides when the compromise was set aside. A similar question was

considered by Mookerjee, J. in Surjaram Marwari v. Barhamdeo Persad 1 C. L. J. 337. where he holds that if a mortgage right was intended to

be merged in a conveyance and the conveyance proved ineffectual, the right under the mortgage revived. In Har Chandi Lal v. Sheoraj Singh 39

Ind. Cas. 243 : 15 A.L.J. 223 : (1917) M.W. N. 290 : 25 C. L. J. 316 : 19 Bom L. Rule 444 a mortgagee sued to enforce his mortgage of 1876,

though he had accepted two later deeds of 1887 in satisfaction of his mortgage and even though he had handed over the document of 1876 to the

mortgagor. It was argued in defence that the mortgage of 1876 was destroyed by the two deeds of 1887 and could not be revived. Their

Lordships, however, say: ""But the original intention of the mortgagee was entirely frustrated by the fact that the two deeds were held not to be

binding on Musammat Mandan, and it does not appear to their Lordships to be consistent with equity or good conscience that the first three

defendant, having successfully maintained that the transaction embodied in the two deeds of 1887 was not binding on Musammat Nandan, and

consequently did not bind them as heirs of Jai Chand, should now claim the benefit of such transaction as a release of the mortgage of the 13th

November 1876."" Thus their Lordships held in the above case that even defendants could not plead against the revival of a former deed when the

later deeds intended to supersede it were invalidated at their instance. A fortiori it is clear that a plaintiff could not invalidate a compromise-deed

and yet contend that the rights under the gift-deed which were intended to be superseded by the compromise-deed could not be revived even as a

shield by the defendants. In fact, the matter seems to me to be unarguable.

18. In the result I would dismiss the appeal with costs. We certify for two Vakils for each side.

Spencer, J.

19. This suit was instituted by the Rajah of Ramnad to recover possession of the village of Nedunthulasi which was gifted away by his father, the

late Rajah, by a permanent rent-free gift-deed dated June 2nd, 1895, to the 1st defendant. It is alleged in the plaint that the 1st defendant in his

capacity of Javab Navis (private secretary) to the Rajah exercised undue influence over his master, a man of weak will, to obtain this and other

benefits for himself. About a month after this gift the late Rajah entered into an arrangement on July 12th, 1895 (Exhibit IV) by which he handed

over his estate upon trust to be managed by a pensioned Subordinate Judge named Rao Bahadur Venkataranga. Iyer (styled a Dewan Trustee)

with one co-adjutor, Mr. Chentsal Rao, C. I. E., and with a Committee of three, consisting of himself and two distinguished legal practioners who

had power to remove the trustee or the coadjutor and to fill their plates when they became vacant. The estate was to be thus managed till the

present Rajah attained the age of 21, which happened on June 3rd 1910, within

3 years before the filing of the plaint in this suit.

20. On April 24th 1902, the said Dewan Trustee together with the two lessees of the Ramnad Estate entered into an amicable arrangement of

compromise (Exhibit II) with the 1st defendant whereby he was to continue to enjoy the village of Nedunthulasi hereditarily and in perpetuity, but

instead of its being rent free he was to pay a Poruppu or quit rent of Rs. 402-1-10 annually which amounted to a moiety of the sarasari or average

rent of Rs. 804.3.7. The present suit, whether its object be to set aside the gift-deed of 1895 or the settlement of 1902, is hopelessly time-barred

under Article 91 of the Limitation Act.

21. Mr. S. Srinivasa Iyengar argued that the later transaction having superseded the earlier gift, the plaintiff need not sue to set aside the gift but he

could within 3 years of attaining majority repudiate the acts of his trustee if they were improvident and injurious to his interests.

22. When this case came before a Bench of this High Court on a previous occasion, the learned Chief Justice and Seshagiri Iyer, J. sent it back for

fresh consideration and for further evidence on the questions whether the undue influence to which the Rajah was alleged to have been subjected,

continued to affect the succeeding trustee as was alleged in paragraph 22 of the plaint, and whether the transfer (Exhibit II) was inconsistent with

the duties of the trustee.

23. The Subordinate Judge has now found that there is no evidence, much less any allegation that the succeeding trustees were subject to any

undue influence"; he also observed that it was "difficult to hold that the suit was in time in view of the fact that there was no evildoer or even any

allegation that the late Rajah continued to be under the undue influence of the 1st defendant, for 8 years after the gift till he died in 1903.

24. Accordingly, it is not now contended in appeal that the trustee, Venkataranga Iyer, was under undue influence. It is only argued that his act in

confirming the Rajah's grant, though with the modification that quit rent was to be paid, was an improvident act and in excess of his powers, as he

should have sued to have the gift set aside if he had realised his responsibilities and if he had been aware of the facts which would have enabled him

to succeed in such a suit.

25. Now, Rao Bahadur Venkataranga Iyer had been given facility for obtaining

the advice of that distinguished Hindu gentleman of unquestioned probity, Mr. Chentsal Rao, C.I.E., on all important matters connected with his trust. I am of opinion that he may have realised the difficulty of establishing in a Court of law that the Rajah was actuated by undue influence when he made the gift of this village, and the further difficulty of proving that that influence prevailed so long as to excuse the failure of those in whom the management of the estate vested for 3 years after 1895 to make any attempt to revoke the gift. In 1902 he may have bona fide considered that half a loaf was better than no bread and that, therefore, in the best interests of the minor he was well advised to save at least Rs. 402 a year out of the village in view of the improbability of a suit to recover the whole village intact being successful. It was thus a compromise of a doubtful claim. He was acting within his powers u/s 43 of the Trusts Act, read with the proviso to the section which relates to sole trustee and with Clause 22 of the deed of trust. The meaning of the words "sole acting trustee" occurring in Section 43 of the Indian Trusts Act becomes clear from a reference to Section 21 of the English Trustees Act of 1893. If the instrument creating the trust authorises a sole trustee to execute the trusts and powers thereof he is termed a sole acting trustee when he enters into an agreement of composition or other arrangement.

26. But it is argued that the deed of gift of 1895 bears on its face traces of undue influence because it contains false statements, (1) that the village was only worth Rs. 7,000, whereas it is, on the statement of D. W. No. 1 now worth about Rs. 30,000, and must have then been worth about Rs. 20,000, (2) that the Rajah was acting in deference to his mother's wishes though she had died 2 months before, and (1882) 19 Ch. D. 403 : 51 L.

J. Ch. 879 that the donee had been working for 12 years without any salary. It is further argued that u/s 16 (3) of the Indian Contract Act the burden of proving that the gift to the defendant was not induced by undue influence lay on the defendant.

27. The case of *Bridgemen v. Green* (1757) 97 E. Rule 22 is cited as an instance of undue influence exercised by a servant over his master. The circumstances of that case were exceptional. Conveyances which purported to have been made for valuable consideration were held to be not supportable even as gifts when their execution was obtained by fraud and undue

influence. There is no presumption that all servants wield such influence as Green wielded over their masters, or that all masters are so weak-willed as Bridgemen. The evidence in the present case tends to show that the late Rajah was emotional and "generous to a fault" but not of weak intellect or irresponsible for his actions. It has not been proved that the 1st defendant was in a position to dominate the will of the Rajah or that the transaction was an unconscionable one. The 1st defendant already had a lease of this village for which he had to pay a Poruppu of Rs. 800 and odd. The statement in the gift-deed that the Rajah's mother wished to confer some benefit on the 1st defendant for his services is not shown to be false, and the fact that the occasion was that of the mother's second masigam makes it probable that the Rajah was actuated by pious feelings evoked by his mother's memory when he made the gift. To adopt the words of Sir Arthur Wilson when delivering the judgment of the Privy Council in *Ismail Mussajee Mookerdum v. Hafiz Boo* 33 C. S 778., but substituting the words "servant" for "daughter" and "master" for "mother", the circumstances of this gift may well be summed up in these words:

28. The mere relation of servant to master, of course, in itself suggests nothing in the way of special influence or control. The evidence seems...quite insufficient to establish any general case of domination on the part of the servant and subjection of the master, such as to lead to a presumption against any transaction between the two. With regard to the actual transactions in question, there is no evidence whatever of undue influence brought to bear upon them." Now looking at the facts of this transaction in the same light as they have been presented at the trial of this unit, the Dewan Trustee with his coadjutor having the resigned Rajah with his Committee of lawyers behind them may well have doubted the practicability of getting a Court of Justice to undo what had been done and so they may have allowed the claim to become barred by time and finally to have made the best terms possible out of a bad case. The result of that settlement is Exhibit II in which it is recited that the trustee and the lessees in consideration of the costs, trouble, and inconvenience that both parties might be put to if proceedings were instituted in Court in respect of the deed of June 2nd, 1895, as well as of the uncertainty of the result of

litigation and other facts, had decided to have the dispute settled amicably and have entered into the arrangement detailed therein.

29. That arrangement, in my opinion, cannot now be legally set aside. Even if the plaintiff could now succeed in setting it aside his position would be worse, as he would then be confronted with the more formidable obstacle of the absolute gift by his father to 1st defendant. His suit to set aside the gift is long out of time. The appeal fails and is dismissed with costs.