
(1937) 08 BOM CK 0011
In the Bombay High Court
Case No : First Appeal No. 53 of 1934

Shivgangawa Madiwalappa Vulavi

APPELLANT

Vs

Basangouda Govindgouda Patil

RESPONDENT

Date of Decision : 13-08-1937

Acts Referred:

Contract Act, 1872 — Section 16(3)

Citation : AIR 1938 Bom 304 : (1938) 40 BOMLR 132

Hon'ble Judges : Wassoodew, J;Thakor, J

Bench : Division Bench

Judgement

Wassoodew, J.—This appeal arises from the decree of the Joint First Class Subordinate Judge of Belgaum dismissing the plaintiff's suit for a declaration that the gift-deed dated August 10, 1927, executed by the plaintiff in favour of the first defendant was void as it was obtained by undue influence, fraud and coercion, and for recovery of possession of a field and house comprised therein, together with mesne profits. The learned trial Judge upheld the defence containing a categorical denial of the plaintiff's assertions invalidating the document.

2. The plea of undue influence was adumbrated in the following manner in the plaint. It was stated that the plaintiff was a young widow with no relatives to look after her, that she had quarrelled with her husband's brother who was sponging on her slender income from the property inherited from her brother, and that when she fell out with him and sought the advice of the first defendant who was an influential man in the village, the latter betrayed her and carried on immoral intercourse with her and ultimately obtained through his influence a gift-deed of all her properties, and immediately thereafter drove her out of his house.

3. The learned trial Judge upon those pleadings raised the issues " whether the deed of gift was executed by the plaintiff voluntarily," and " whether the plaintiff proved that the deed of gift (exhibit 24) was taken from her by coercion and fraud as alleged," and found them both in the defendant's favour.

4. Certain facts are indisputable in this case. The plaintiff-appellant was an infant widow, she having lost her husband while she was barely five years of age. Her father had died during her infancy and she was looked after by her mother. Her brother who was not very much older than herself died at a comparatively young age. While the plaintiff was barely twenty-four, the only person whom she could look forward to for guidance, namely, her mother, died. Thereafter her husband's brother, one Doddappa, befriended her and came to live in her parents' house with his family. There were quarrels between Doddappa and the plaintiff which culminated in certain criminal proceedings. The police in view of the cross complaints sealed the house, as a result of which the plaintiff was thrown out on the streets. It was at that time, i.e., in December, 1924, or thereabouts, that she formed the acquaintance of the donee, the first defendant in this case. The latter was an influential man in the village being a watandar patil of the place and with his assistance she secured her heritage from Doddappa, her husband's brother. It is common ground that since then the plaintiff had been under the protection of the donee till the date of the deed of gift.

5. There is conflict as to where the plaintiff lived during the intervening period, the donee maintaining that she lived in his house as a friend while the plaintiff contending to the contrary, namely, that she was kept in the house of one Ajappa for some time where the first defendant paid her visits and carried on immoral intercourse. The case in regard to the degree of familiarity between the parties and its nature must to a large extent depend upon the appreciation of the evidence of the plaintiff and the donee. The learned trial Judge in relation to that part of the case has expressed in somewhat unclear language what his findings are, although they are susceptible of the view that the nature of the familiarity alleged by the plaintiff was accepted by him. This is what he has stated :-

For two years following, plaintiff and defendant No. 1 practically lived like husband and wife, and plaintiff thought that those relations between, them would continue until the death of either of them.

6. But he used that finding to support the view that the immorality served as a probable motive for the deed of gift.

7. In connection with these facts other important circumstances have to be borne in mind. I have already indicated that the only relative of the plaintiff on her husband's side was hostile to her, and she was deprived by him of the means of subsistence. She was entirely, therefore, depending on the generosity of the first defendant until the latter succeeded in securing for her the house and land inherited from her brother. It is also evident from the record that she was the victim of false prosecutions and charges. According to the plaintiff she was led to believe that she escaped arrest only by reason of the intervention and through the services of the donee, the first defendant. That coupled with the latter's position in the village explains his relationship with the donor. There was then no other connection between the two. According to the first defendant's own showing he had placed himself in loco parentis to the plaintiff. That is the most

charitable construction we are asked to place on his connection, although according to the record it can reasonably be supposed to have been rooted in iniquity and sin. This is so expressly stated by the plaintiff. That statement has received qualification from the defendant himself :-"Throughout the time that plaintiff remained with me she was on affectionate terms with me." The defendant has also stated that because of the affection she bore towards him the deed of gift was executed. The motive for that gift is thus specified :-

Out of gratitude she felt for me, because I assisted in her criminal complaint and securing possession ; because I maintained and took care of her and because I incurred costs to maintain her and to enable her to visit places of pilgrimage and lastly, because she was issueless ; also because she was confident that I would protect her in future, the gift-deed was made.

A part of that is untrue for the plaintiff's income in the hands of the defendant was more than sufficient to maintain her. The defendant has stoutly denied the impurity of their connection. But that denial in our opinion is not sincere. Here was a young widow with no relation to sympathise with her solely depending on the protection of the defendant who was not very much older than herself. The defendant managed her estate and collected its profits. The plaintiff had evidently no experience of management and was altogether illiterate.

8. The question of the precise relationship between the parties before and at the time of the gift assumes great importance in this case. We have no doubt whatsoever, whether the connection at its inception was benevolent, that it was steeped in depravity and the donee had influence over the plaintiff, the influence arising both out of vice and the position of power and influence held by the donee. We also believe the plaintiff that by various pretences and show of sympathy the defendant had gained a position of dominance over the plaintiff at the material time. It is during the subsistence of that relationship that the deed of gift was executed.

9. It is now well established that in a Court of equity, when a person obtains any benefit from another, whether under a contract or as a gift, by exerting his influence which, in the opinion of the Court, prevents the grantor from exercising an independent judgment in the matter in question, the latter can set aside the contract or recover the gift. The Court of equity then 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. The proposition is very clearly stated in Ashburner's Principles of Equity, 2nd Edn., p. 299, thus :-

When the relation between the donor and donee at or shortly before the execution of the gift has been such as to raise a presumption that the donee had influence over the donor, the court sets aside the gift unless the donee can prove that the gift was the result of a free exercise of the donor's will.

The corollary to that principle is contained in Clause (3) to Section 16 of the Indian Contract Act. That clause is as follows :-

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 lie upon the person in a position to dominate the will of the other.

10. Far from laying down a rule of law the burden is cast on the grantee of proving freedom of consent by reason of the fact that he is in a dominant position and has made a bargain. The principle has been well affirmed in several cases both of contract and of gift see AIR 1924 60 (Privy Council) , AIR 1920 65 (Privy Council) A.V. Palanivelu Mudaliar Vs. Neelavathi Ammal, and Rajaram v. Khandu Balu (1911) 14 Bom. L. R. 340. It was considered in all its bearings by Straight J. in Sital Prasad v. Parbhu Lal ILR (1888) All. 535 where upon a review of the authorities he expressed himself as follows (p. 545) :-

But what the Courts in this country will do, is to see that, where one person is so situated as to be under the control and influence of another, such other does not unduly or unfairly exercise that influence and control over such person for his own advantage or benefit, or for the advantage or benefit of some religious object in which he is interested, and will call upon him to give clear and cogent proof that the transaction complained of was such a one as the law would support and recognize.

It is not proper to contend that the rule of equity is restricted to cases where strictly or technically fiduciary relationship is established. In the case of Sital Prasad v. Parbhu Lal, a passage from the notes to Huguenin v. Baseley (1807) 2 White and Tudor's Leading Cases in Equity, 4th Edn., p. 592. (9th Edn., pp. 227-238). was referred to by that eminent Judge, wherein the following observations of Lord Cottenham in Dent v. Bennett (1839) 4 My. & Cr. 268, 276. were quoted (p. 545) :-

.. I will not narrow the rule or run the risk of in any degree fettering the exercise of the beneficial jurisdiction of the Court by any enumeration of the description of persons against whom it ought to be most freely exercised.

The rule has been, and I may say so with respect, rightly, extended to cases where the possibility of exercising influence exists from confidence created or established by the relation between the donor and donee. The principle has been usually applied to cases of pardanashin ladies see (1891) ILR 18 545 (Privy Council) , (1901) L.R. 28 I.A. 71 (Privy Council) and Sajjad Hussain v. Wazir Ali Khan (1912) L. R. 39 IndAp 156 : 14 Bom. L.R. 1055). Their Lordships of the Judicial Committee in (1900) L.R. 27 I.A. 168 (Privy Council) expressed themselves opposed to the idea of restricting the operation of the equity rule to pardanashin women; only. The argument pressed on the Board was that the defendant, a Kashmiri, who had married a European, was a quasi pardanashin lady and was entitled to protection. Whilst dismissing that contention on the ground that she was a person of " superior mental capacity " they made the

following observations (p. 176):-

As to a certain well-known and easily ascertained class of women, well-known rules of law are established, with the wisdom of which we are not now concerned. Outside that class it must depend in each case on the character and position of the individual woman whether those who deal with her are or are not bound to take special precautions that her action shall be intelligent and voluntary, and to prove that it was so in case of dispute.

Therefore the rule must apply to all variety of relations in which the Court is satisfied that the possibility of exercise of dominion and influence exists ; that is, the relation of active confidence justifying the raising of the presumption of undue influence. It must however be borne in mind that the application of the rule of presumption must depend not merely upon the circumstances attending the transaction but upon the relationship itself. The relation 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. The case of *James v. Holmes* (1862) 6 L. T. 589 was a case where the relation of paramour and mistress existed. We are satisfied upon the record that even upon a most charitable view of the conduct of the first defendant towards the plaintiff the relationship justifying the raising of the presumption exists in this case.

11. At the material time the only properties which the plaintiff possessed as her own were the house and the land which are the subject-matter of the gift. They provided her maintenance, and her husband's brother was not so affluent as to sustain her. There was no other relative to whom the plaintiff could go, and there was none who could give her disinterested advice. In these circumstances if she parted with all her property in gift to the first defendant who was in no way related to her, transparently it was a bargain which must " shock the conscience" or in other words be regarded as unconscionable. On the face of it it was a most improvident transaction on the part of the plaintiff. The onus must therefore rest on the first defendant maintaining the gift to establish that no undue influence was exercised and that his relationship was not abused and that the act was a righteous and a voluntary one. The question is whether that onus has been satisfactorily discharged in the present case.

12. The learned advocate appearing on behalf of the first defendant has contended that he was labouring under a serious difficulty inasmuch as this aspect of the case was not fully appreciated at the trial. That is not accurate having regard to the argument adverted to in the lower Court's judgment, the frame of the first issue in this case, and the assumption of the onus by the defendant. As regards the pleadings there are sufficient indications of undue influence therein exercised upon the plaintiff by the first defendant although there have also been serious allegations of fraud and coercion with which it is unnecessary to deal at the present moment. What we are concerned to note is under what circumstances was the deed of gift brought about.

13. I have already stated that in our view the defendant was carrying on intercourse with the plaintiff either in another house or in his own house. It is pointed out that having a wife living with him that sort of debauchery was impossible. We do not think having regard to the polygamous customs prevailing in this country that position is incompatible with the preservation of the nuptial tie. There is nothing indicated in the evidence of the defendant that anything transpired antecedent to this deed and which precipitated the act in dispute. What is curious to note is that according to the defendant he was pressed to accept the gift much against his conscience and will. This is what he has stated :-

When she first expressed the idea to me, no third person was present. I tried to dissuade this plaintiff ; but she said that human life was not certain and added that she had no issue. She adhered to her idea of the gift. Since then she was daily after me suggesting a visit to Bail Hongal for the purpose of executing a gift-deed there.

That sort of explanation is thoroughly disingenuous and incredible. The explanations with regard to the purchase of stamp, the giving of instructions, the execution of the document and its registration, are not honest and only serve to intensify the suspicion.

14. It was suggested that the donor herself drove with the defendant to Bail Hongal, procured the attesting witnesses, went to a writer who was familiar with her although he happened to be a grantee of a land from the ancestors of the donee, and executed the deed. The writer and the two attesting witnesses who were examined, namely, exhibits 73, 76 and 77, have very clumsily attempted to support the defendant. It does not look probable that this young widow would dictate or indicate the terms of a gift to an experienced writer. This was the first time that any document was executed by the plaintiff and the language and the phraseology suggest a pre-conceived and well thought out idea as to its terms. It appears that the witnesses who have attested the document were prepared to say that they were casually present at Bail Hongal where it was written and executed and had no connection with the parties themselves. One of them Mallappa could not deny that he was a partner of the first defendant. The other's presence was according to the plaintiff procured by the defendant as he was brought with them in their cArticle. In the view we take the story that the first defendant took a very passive interest and was a silent spectator of this phenomenon is unbelievable. There was a limit to saying that only the plaintiff was active in the preparation of the deed. It is remarkable to note that the attesting witness Mallappa (exhibit 77) in trying to emphasize the voluntary character of the transaction has overdone his pArticle. He said that " defendant No. 1 said to the writer that plaintiff voluntarily wanted to execute a gift-deed." The singularity of that instruction obviously detracts from the sincerity of the deponent.

15. Now there is nothing in the testimony of the defendant himself from which it could be said that the plaintiff was able to form a correct appreciation of her

position in relation to this transaction. Ex facie it must be a thoughtless act on the part of the widow who was young and had a long future. It is not known whether remarriages are permitted in this community, but apart from it from the evidence as to the ornaments worn, she belongs to a respectable community and required for her wants considerable amount per year. That is the defendant's own version of her requirements. In that state of things there must be some good impelling reason to induce her to divest herself of her entire estate.; That is entirely lacking in this case. When the power of influence and the influence itself are established, something more than a bare assertion of affection or a generous feeling of gratitude must be furnished to turn the scale.

16. The conduct of the defendant was clearly time-serving. He was subserving his own ends and unmindful of the consequences to the widow. The ruthless manner in which he drove her away very soon thereafter serves to explain his mentality. The reason why he drove her away within seven days after the deed of gift, and, after a statement was procured from her before the police that she accepted the implication of her act in all its bearings was that one Swami an unpaid servant of the defendant was suspected of immoral connection with her. Now a person professing such affection and regard for this helpless young widow would naturally have allowed some locus paenitentiae instead of acting on a bare suspicion. That conduct detracts from the value of the defendant's protestations and is discreditable of the substantive part of the story put forward in defence to this action. It may be, as has been now discovered that the Swami has a hand in her present career, but that is no reason to accept the statement that the plaintiff voluntarily left the defendant's house upon a charge of unchastity to live with the Swami in another village. There is considerable body of evidence to show that the Swami continued to stay at Neginhal long after she was driven out. If the inducing cause was to secure her a permanent protection from the defendant and if the latter had acquiesced in the position, one would expect him at least to provide for her needs elsewhere or to make an offer of that kind. That would have gone a great way to confirm the sincerity of the defence. But the fact that she was left to her own resources shows the meanness of the defendant and deprives him of all sympathy.

17. We are conscious of the weight due to the appreciation of the evidence by the learned trial Judge who had the advantage of seeing the witnesses. But it seems to us that he has not approached the examination of the evidence from the correct standpoint. It may be that the plaintiff did not appear helpless and was assertive in the witness-box. But she was examined in 1933, nearly six years after the execution of the deed of gift. She had perhaps grown wiser with experience of this world under the hard strain of penury. We think, upon a careful consideration of the facts and circumstances, there is no reasonable ground for holding that the plaintiff acted with sense and judgment or that she comprehended and appreciated her act, its nature and effect or how it would reflect on her position, an act which obviously resulted in depriving her of everything she possessed in this world.

18. We, therefore, think that the decree of the lower Court should be set aside and her prayer for declaration and possession granted to the plaintiff. With regard to the prayer for past and future mesne profits which is allowed, an enquiry shall be held in the lower Court and the amount ascertained embodied in the decree. The appellant-plaintiff shall get her costs throughout, including the Court-fees which she had to pay to Government.

Thakor, J.

19. I Agree.