
(1921) 05 MAD CK 0003
In the Madras High Court

The Honourable B. Rajarajeswara Sethupathi Avergal, alias
Muthuramalinga Sethupathi Avergal

APPELLANT

Vs

Kuppuswami Aiyar and Others

RESPONDENT

Date of Decision : 30-05-1921

Acts Referred:

Limitation Act, 1963 — Article 91

Citation : AIR 1921 Mad 394 : (1921) 41 MLJ 474

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The plaintiff appellant is the present Rajah of Ramnad, the owner of an ancient Zamin-dary. He brought this suit to

recover possession with mesne profits for 3 years before suit of the village of Nedunthulasi within the area of hisZamindari which village had been

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

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, 30-6-1913.

2. The first transaction was the lease granted by the plaintiff's father, the then Rajah, in September 1894 under Ex. 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 this 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 Ex. 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 Venkatarengier (who was constituted the present plaintiff) 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 zamindari were also parties

to the agreement, but it is unnecessary to refer to them further). That agreement is Ex. II. The trustee had threatened the 1st defendant with a suit to

set aside the gift deed, (Ex. I, June 1895). "Thereupon, the dispute was settled by this agreement, Ex. II, the 1st defendant agreeing to hold the

village on perpetual lease at half the usual rent and thus altering" the gift under Ex. 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 plaintiff 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 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 defendant's 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 Rajah 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 Zamindari Estate, the pomp and ceremonies 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, favourites,

flatterers, idlers, the Zenana, etc, affected the zamindar's residence (known, of course, 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 1st defendant was not in a position to exercise undue influence over the late Rajah"" and ""the deed of gift in favour of the 1st defendant was not brought about by undue influence"" and ""the gift is valid"". (This finding relates to the gift deed of June 1895, Ex. 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 Article 91 of the Limitation Act "" is ""applicable "" (Vide *Rajah Rajeswara Dorai v. Arunachalam Chettiar* I.L.R.(1913) Mad. 321).

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 Venkatrengaier 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 argument on these 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 person who by temperament was immoderately extravagant. His education and bringing up only tended to increase his natural foibles.

D.W. I says "" the late Rajah was a very emotional person."" Under the Roman Law he would be considered as a person permanently affected with

incapacity to manage his 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 liberty.

Shrewd Natlukottai Chetties took advantage of his perpetual need of money even before he attained majority (which was on 3-11-1889) 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 Aiyar because the latter was a trusted servant of his

mother for several years and he made the 1st defendant his own vernacular Secretary (Javapnavaez). 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. 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

P.W. Section 1 and 2 who say that on the 2nd monthly ceremony after the Dowager Ranee'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 5 1/2 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, Ex. IV, which was executed one month and 6 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 (1) confidence has been reposed on the person charged (A in our illustration) as where the latter is a solicitor, trustee guardian etc., or

(2) 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 a prospective injury to his secular or spiritual welfare and happiness. An ordinary servant and dependent like the 1st defendant could 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, Exs. E to B, 1 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 has just attained majority or a gosha lady makes a gift to the manager who manages all her affairs and who 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 case which I need quote is *Ismail. Mussajee Mookerdum v. Hafizboo* ILR (1906) Cal. 773 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. Jhonstone*, (1882) 19 Ch. D. 603 which was a case not of 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 Raja's benefactions ranged over

wide areas from the Sringeri Mattam in the Mysore Province to wealthy Nattukkotai Chettis and 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, 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 under influence. I may even go further and say

that the plaintiff did not even allege that the older lease deed of 1894 Ex. 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 trusty. Section 43 of the Trusts Act says that a sole acting trustee authorized to execute the trusts and powers of the instrument of trusts may

compromise, compound, abandon, submit to arbitration or other, wise 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 defen. dant under the gift deed which had

been in force for nearly 7 years on the date of Ex. 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 aside was prima facie clearly barred on the date of Ex. B and the Dewan-Trustee acted in my opinion very

prudently in getting the 1st defendant to sign Ex. 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* L.R. 1904 1 Ch. 622).

14. Lastly, dealing with the question of limitation and assuming for the sake of argument that the gift deed Ex. 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 Kunnwar v. Ajit Singh* ILR (1887) Cal. 58 . The limitation period is three years from

when the facts entitling the person to have the instrument cancelled or set aside becomes 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 1898, 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 donee for possession even after the period of limitation but that is not the case here.

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

question in a case brought by the present plaintiff himself. *Raja Rajeswara Dorai v. Arunachalam Chettiar* 24 M.L.J. 592 and expressed the

opinion that the cessation of undue influence has no relevancy on the question of limitation unless of course, 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 Krishan Lal v. Mussamat Kashmiro*

(1916) 31 M.L.J. 364 their Lordships of the Privy Council expressed such an opinion. I do not think there is anything in that case which supports

the contention of Mr. Srinivasa Iyengar. The facts there were 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 begn to run against a widow (defendant) even if she had to bring a suit to set aside

the disputed transaction till her husband's brother's influence ceased at his death. She has executed an arbitration agreement under the undue

influence of her husband's brother and she set up the undue influence 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 that 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 passed, not on the ground that the death of the husband's brother and the cessation of his influence was the

date for the terminus adquo of the cause of action under the law but that it was on the ceasing 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 Article 91 uses the word ""plaintiff"" that

word ""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 Dewan-Trustee or

any of his successors as the date of the cause of action. In this connection I wish to express with great respect my dissent from the decision in 2

Nag L.R. 98 which has been relied on by Rustomji 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. Srinivasa Iyengar is, in my opinion, entirely irrelevant and misleading. There is not a tittle of evidence that either the

Dewan-Trustee, Mr. Venkata Rangaier, a very capable retired Judicial Officer who was the trustee for 11 years till September 1906 or Mr.

Varadaraja Sarma (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 Ex. C of 1894, 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 once for all each earlier 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

deeds if the latter 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

Khajoorunnissa v. Rowshan Jehan ILR (1876) Cal. 184 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 Surjiram Marwari v. Barhamdeo Persad (1904) 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 Harchandi Lal v. Sheoraj Singh ILR (1916) All.

179 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 two deeds were held not to be binding on Mussatnmat Nandan and it does not appear to Their Lordships to be consistent with equity

or good conscience that the first three defendants, having successfully maintained that the transaction embodied in the deeds of 1887 was not

binding on them as heirs of Jai Chand, should now claim the benefit of such transactions as release of the mortgage of the 13th of 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 2 vakils for each side.

Spencer, J.—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 pLalnt 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 Ayyar (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

practitioners"who had power to remove the trustee or the coadjutor and to fill their places 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 pLalnt in this suit.

2. 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 ot Rs. 402-1-10 annually which amounted, to a moiety of thesarasari 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.

3. Mr. 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.

4. When this case came before a Bench of this High Court on a previous occasion, the learned Chief Justice and Seshagiri Aiyar, 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.

5. 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 evidence 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"".

6. Accordingly it is not now contended in appeal that the trustee, Venkataranga Aiyar, 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.

7. Now Rao Bahadur Venkafa Ranga 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 1395

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 in tact being successful. It was thus a compromise of 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 2,2 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 Trustee 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.

8. 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. 1 now worth about Rs. 30,000 and must have then been worth Rs. 20,000, (2)

that the Rajah was acting in deference to his mother's wishes though she had died 2 months before, and (3) that the donee had been working for

12 years without any salary. It is farther argued" that u/s 16(3) of the Indian Contract Act the burden of "proving that the gift to 1st defendant was

not induced by undue influence lay on the defendant.

9. The case of *Bridgeman v. Green* 97 Eng. Reports 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 reported 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 *Mr. 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 dommate the will of the Rajah or that the I transaction was an unconscionable one. The 1st defendant

already had a lease for 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 Mookerdam v. Hafts Boo ILR 33

Cal. 773 but substituting the words "servant" for "daughter" and "master" for "mother" the circumstances of this gift may well be summed up in

these words:

10. 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 suit, the

Dewan. Trustee with his Co-adjutor 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 cost/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 of other facts, had decided to have the dispute settled amicably and had

entered into the arrangement detailed therein.

11. 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

that gift is long out of time. The Appeal fails and is dismissed with costs.