[4 Mad. 137]

APPELLATE CIVIL.

The 18th January and 6th September, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Venkata Chinnaya Rau (Defendant), Appellant

and

Venkataramaya Garu and others (Plaintiff) Respondent*

Consideration for promise—Indian Contract Act, Section 2.—Stranger to consideration.

L granted an estate to C and directed her to make an annual payment to L's brothers. C by agreement of even date made with L's brothers promised to carry out L's directions.

Held by INNES, J., following *Dutton* v. *Poole*, that the agreement was enforceable against C by L's brothers:

Held by KINDERSLEY, J., that the grant by L and the promise by C to the brothers of L being one transaction, there was a sufficient consideration for the promise within the meaning of the Indian Contract Act, Section 2.†

ON the 9th of April 1877 Raja *Suraneni Lakshmi Venkanna Rau* granted her share in the Zamindari of *Milavaram* to the defendant, her daughter, wife of the *Nuzvid* Zamindar, by registered deed of gift.

Paragraph 12 of the deed ran as follows: "I have been till now giving annually Rs. 653 to my brothers as I pleased. You also should therefore, until you give them a village which can yield the said income exclusive of peishcush, be paying them and their descendants."

On the same date the defendant executed an agreement in favour of the plaintiffs, the brothers of the donor, covenanting to carry out the terms of paragraph 12 of the deed of gift.

[138] This suit was brought to recover the amount due on the 9th April 1878 with interest, as the defendant declined to fulfil her promise.

The defendant pleaded that the plaint was insufficiently stamped; the agreement (Exhibit A) was improperly stamped; that it was obtained by duress; that there was no consideration for it; that it was not binding on her as her husband had not consented to it; and that the plaintiffs had no right to sue.

The defendant failed to establish any of her pleas in the Lower Courts, and in second appeal the chief objection taken on her behalf to the decree was that the plaintiffs had no right to sue as they were strangers to the consideration for the promise.

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* Second Appeal No. 520 of 1880 against the decree of B. Horsbrugh, District Judge of Kistna, confirming the decree of Moulavi Mahomed Abdul Allum Sahib Bahadur, District Munsif of Bezvada, dated 20th February 1880.

† [Sec. 2:—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context.

Interpretation clause.

* * * * *

(*d*) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. * * *

Mr. *Johnstone* for Appellant.

Mr. *Spring Branson* for Respondents.

The Court (INNES and KINDERSLEY, JJ.) delivered the following **Judgments:**—

Innes, J.—The plaintiffs' sister, by deed of gift on the 9th April 1877, made over certain landed property to the defendant, her daughter. By the terms of the deed which was registered, it was stipulated that an annuity of 653 rupees should be paid every year to the plaintiffs as had hitherto been paid by the donor until a village could be given them.

The defendant on the same date executed in plaintiffs' favour a Kararnama promising to give effect to the stipulation of the deed of gift by paying the annuity until she gave them a village. The annuity was not paid and the plaintiffs sued to recover it.

Various pleas were set up, one of which was that the document in favour of plaintiffs was executed under coercion. The Courts below have found, upon evidence warranting the finding, that there was no coercion, but that the document was executed and registered voluntarily by defendant.

The first question argued before us was whether the plaintiffs, who were strangers to the consideration for the promise, have a right to sue. The document executed by the defendant in favour of the plaintiffs was in these terms: "According to the terms set forth in the 12th paragraph of the deed of gift of possession, &c., I hereby agree to continue to carry out in your favour, perpetually and hereditarily, &c., the terms stated in the said paragraph."

[139] There is great conflict in the cases on the question, but the rule deducible seems to be that the plaintiff can only sue if the consideration moved indirectly from him wholly or partly. In case of *Dutton* v. *Poole* (2 Lev., 210; 1 Ventr., 318, affirmed in error in the Exchr. Ch. T. Raym., 302), Sir *E. Poole* was about to fell timber on his estate to the value of £1,000 for the purpose of giving that sum to his daughter *Grisel* as her marriage portion. The eldest son interposed and promised Sir *Edward* that if he would refrain from felling the timber, he (the son) would pay *Grisel* £1,000. Sir *Edward* agreed to this, and gave up his intention of felling the timber. On his death the son refused to fulfil his promise. The daughter *Grisel* (joining her husband) sued, and it was held she might do so for the son had the benefit of the timber and the daughter had lost her portion through the promise of the son. There is also another similar case called *Rockwood's* case in which the father, at the request of the eldest son, and on his promise to pay an annuity to each of the younger sons, refrained from charging the lands with the annuity. In this case, when on the death of the father the eldest son who came into the property refused to pay the annuity, it was held that the younger sons could sue. In these cases the consideration moved indirectly from the plaintiff to the defendant. In each case the action of the defendant operated to shut out the plaintiff from a certain benefit and to substitute a future benefit dependent on the fulfilment by him of his promise. On the other hand, in *Tweddle* v. *Atkinson* (30 L. J. Q. B., 265; s.c. 1 B. and S., 393) it was held that the plaintiff could not sue. The case was this: the parents of the plaintiff and his wife agreed together after the marriage that each should pay a sum of money to the husband, and that the latter should have full power to sue for the money. The plaintiff in this case was held not to be a party to the consideration, and on this ground not entitled to sue. The distinction between this and the preceding cases is obvious. The plaintiff did not lose anything by the arrangement between the two parents, nor was he

worse off from the non-fulfilment of the promises than he would have been if they had not been made, nor did the promises result in any present benefit to the persons promising to the detriment of the plaintiff; so that there was no consideration moving directly or indirectly from him to the defendants. It cannot be doubted in [140] the present case that the document A was executed by defendant in pursuance of the donation deed B, and with a view that the defendant might take the benefit of that deed.

Plaintiffs' sister, the donor, expressly stipulated that the sum she had hitherto paid should be continued to plaintiffs until they could be provided with a village, and it appears that she only ceased to pay plaintiffs the annuity herself, because the source from which it had been derived was now placed in the hands of defendant and subject to her control. By the transfer effected by B therefore, defendant gained a large estate and plaintiffs lost the yearly sum which the donor would otherwise have paid them. It seems to me that the case is on the same footing as *Dutton* v. *Poole*, and that a consideration indirectly moved from plaintiffs to the defendant. If there was consideration moving from plaintiffs for the promise contained in A, the agreement can be enforced by plaintiffs, and the Courts below were right in giving them a decree for the annual sum due and not paid.

As to the question whether the document A is sufficiently stamped, it has already been admitted in evidence as duly stamped, and this Court has no power to exclude it as inadmissible, though, if it were thought the document had been wrongly stamped, we might act under Section 50 of the *Stamp Act* of 1879. I think, however, it was properly stamped as an agreement. It was executed when the Act of 1869 was in force, and is not a bond within the definition of that Act.

I would dismiss this appeal with costs.

Kindersley, J.—I agree that the second appeal ought to be dismissed with costs. As to the consideration I should have had some doubt but for the very wide definition of the term "consideration" in the *Indian Contract Act*, Section 2, which is in these terms: "When at the desire of the promisor the promisee, *or any other person*, has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing something, such act, or abstinence, or promise, is called a consideration for the promise." It appears to me that the deed of gift in favour of the defendant and the contemporaneous agreement between the plaintiffs and the defendant may be regarded as one transaction, and that there was sufficient consideration for the defendant's promise within the meaning of the *Contract Act*.

NOTES.

[THIRD PARTIES TO A CONTRACT—

Can enforce terms of the contract as against parties thereto :—(1912) 14 I. C. 517, where in a relinquishment deed by one brother in favour of others, maintenance was reserved to the sister. It was held that there was consideration of the contract and that the sister could enforce her rights of maintenance.]