

APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Oldfield
and Mr. Justice Seshagiri Ayyar.*

CHIKKAM AMMIRAJU AND FIVE OTHERS (DEFENDANTS),
APPELLANTS,

1917,
February,
14, 15 and 23.

v.

CHIKKAM SESHAMMA AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

Contract Act (IX of 1872), ss. 15 and 16--Threat by a stranger to a contract, to commit suicide, held out to his wife and son and inducing them to enter into contract on that account--Validity of contract--Coercion and undue influence--Suicide whether 'an act forbidden by Indian Penal Code'--'Prejudice' in section 15, meaning of.

By a threat of suicide, a Hindu induced his wife and son to execute a release deed in favour of his brother in respect of certain properties which they claimed as their own.

Held by WALLIS, C.J., and SESHAGIRI AYYAR, J. (OLDFIELD, J., dissenting) that the threat of suicide amounted to coercion within section 15 of the Indian Contract Act, and that the release deed was therefore voidable.

*Per WALLIS, C.J., and SESHAGIRI AYYAR, J.--*Suicide is an 'act forbidden by the Indian Penal Code' and suicide by a Hindu if actually committed, will be an act not only to his own prejudice but also 'to the prejudice' of his wife and son within section 15.

*Per OLDFIELD, J.--*Suicide is not 'an act forbidden by the Indian Penal Code,' directly or inferentially; and hence the threat did not amount to coercion and the release was not voidable on that account. As the person who held out the threat was not a party to the release deed, it was not voidable on account of 'undue influence' within section 16 of the Indian Contract Act.

APPEAL under clause 15 of the Letters Patent against the Judgment of SADASIVA AYYAR, J., who differed from MOORE, J., in *Ammiraju v. Seshamma*(1).

The first plaintiff who was the mother of the second plaintiff and the second plaintiff, alleging that the property in the possession of the defendants belonged to the deceased father of the

* Letters Patent Appeal No. 121 of 1916.

(1) Second Appeal No. 1357 of 1914, preferred against the decree of J. J. COTTON, the District Judge of Godavari at Rajahmundry, in Appeal No. 6 of 1913, against the decree of A. SAMBAMURTI AYYAR, the Temporary Subordinate Judge of Rajahmundry.

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first plaintiff and that his widow (the mother of the first plaintiff) had alienated the same to the defendants without any justifying cause, sued to set aside the same and got a decree that the alienation was not binding on the reversion. Thereafter the defendants brought pressure to bear upon their brother who was the husband of the first plaintiff and father of the second plaintiff. In consequence, the brother threatened to commit suicide in case the two plaintiffs (his wife and son) did not execute a deed of release, relinquishing their rights in the properties in favour of the defendants. On account of this threat the two plaintiffs executed the release deed which they sought to set aside by means of this suit. The defendants contended *inter alia* that no such threat was held out. Both the lower Courts finding that the threat was used, held that it amounted to coercion within section 15 of the Indian Contract Act and gave a decree in favour of the plaintiffs. The defendants filed a second appeal in the High Court.

SADASIVA AYYAR, J., agreeing with the lower Courts dismissed the appeal. MOORE, J., held that the threat held out did not in law amount to coercion or undue influence and allowed the appeal. The result was that the second appeal was dismissed under section 98, Civil Procedure Code. The defendants then filed this Appeal under article 15 of the Letters Patent from the judgment of SADASIVA AYYAR, J.

ON THIS APPEAL,

M. Patanjali Sastri for *P. Narayanamurti*, for the appellants.—Suicide is not an offence punishable under Indian Penal Code; so, section 15 of the Indian Contract Act does not apply. 'Prejudice' in section 15 means some detriment to property and not any sentimental grievance as in this case; see *The Queen v. The Metropolitan Board of Works*(1).

G. Venkataramayya for the respondent.—Section 15 speaks of 'an act forbidden by the Indian Penal Code' and not of an offence punishable under the Indian Penal Code. Suicide is an act forbidden as the attempt or abetment thereof is an offence punishable under the Indian Penal Code. Prejudice need not be in respect of property alone; section 15 provides for an exception where freedom of consent is absent and any circumstance which influences the mind of a party to a contract and destroys the

(1) (1863) 3 B. & S., 710.

freedom of volition would constitute coercion. The loss of the husband to the wife or of a father to the son is sufficient prejudice in law.

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WALLIS, C.J.—It has been found by both courts that the deed in question was obtained by coercion, the coercion consisting in a threat by the fifth witness for the plaintiffs to his wife and son that he would commit suicide if they did not execute the document.

WALLIS, C.J.

It is easy to set up such a defence and the evidence in support of it should therefore be very closely scrutinized before it is held to be made out. Here it has been found as a fact and we are not at liberty to interfere with the finding on second appeal.

The case now comes before us on a Letters Patent Appeal owing to a difference of opinion between SADASIYA AYYAR and MOORE, JJ., as to whether the fact as found amounted to coercion within the meaning of section 15 of the Indian Contract Act.

The point mainly argued before us was that suicide was not an "act forbidden by the Indian Penal Code" within the meaning of the section. With this I cannot agree. At common law suicide was a form of homicide. "Homicide properly so called," says Hawkins (Pleas of the Crown, Book 1, Chapter 9) "is either against a man's own life or that of another." Wilful suicide was felony, and on a finding that the suicide was *felo de se*, his chattels were forfeited to the crown like those of other convicted felons. In section 299 of the Indian Penal Code the offence of culpable homicide is defined in terms which are sufficiently wide to cover deliberate suicide which is dealt with by Mr. Nelson in his Indian Penal Code as a species of Unlawful Homicide, though, of course, section 302 and the following sections which prescribe the punishment for the various kinds of homicide are only applicable to living offenders. These sections are immediately followed by sections 305 and 306 which make abetment of suicide punishable with death in some circumstances and with lesser penalties in others. Then, after dealing in sections 307 and 308 with attempts to commit murder and to commit culpable homicide, the Code proceeds in section 309 to provide for attempts to commit suicide. I find it impossible to hold that an act which it is made punishable to abet or attempt

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is not forbidden by the Indian Penal Code, especially as the absence of any section punishing the act itself is due to the fact that the suicide is in the nature of things beyond the jurisdiction of the court, and it is no longer thought desirable to inflict a vicarious punishment on those who come after him by forfeiting his goods to the crown.

As to the second point, the act threatened must be 'to the prejudice of any person whatever,' and would cover threats to a wife to murder her husband or to a son to murder his father. Here the threat was by the husband and father to kill himself, which must be taken to be an act to his own prejudice which seems to me sufficient to satisfy the section. I may add that I think the threatened act would also be directly to the prejudice of the wife, as it must be taken to be to the prejudice of any wife to deprive her of her husband, especially of a Hindu wife who thereby incurs all the disabilities of a Hindu widow. For the same reason I think the act must be taken to be to the prejudice of the son. I would therefore dismiss the appeal with costs.

Under section 36 of the Letters Patent the appeal is dismissed with costs.

OLDFIELD, J.

OLDFIELD, J.—I have the misfortune to differ from the learned CHIEF JUSTICE and therefore deal with the case at length.

The question is whether a threat to commit suicide is a threat to commit 'an act forbidden by the Indian Penal Code' within the meaning of section 15, Indian Contract Act; and it is conceded that it is not forbidden either directly or in the sense that a penalty is provided for it. It therefore can be regarded as forbidden only by implication. It is accordingly in place to consider whether section 15 can be construed by implication or should be read strictly.

Section 15 has given rise to few decisions and to none, in which the policy of the portion we are concerned with has been defined. No definition of that policy has been suggested before us; and advisedly. For it would be hard to argue that any general policy is in question, when the coercive character of an act depends on the applicability to it of a statute, which, though wide, does not enumerate acts criminal in India exhaustively, which (as the illustration shows) need not have been enacted at all or need not have been in force at the date or place in question

and which might make conduct punishable, although it would be so under no law binding on those concerned or of which they could even be presumed to have known. The test thus provided may commend itself as definite, but can be regarded only as arbitrary and not as intended to promote any general policy, by reference to which liberal construction can be supported. Taking this view, I am bound to scrutinize respondents' arguments closely.

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The first is that a threat to commit suicide is indistinguishable from one to attempt to do so and that such an attempt is forbidden by section 309, Indian Penal Code, which penalizes it. The answer is that threats of these two descriptions are distinguishable unless the word 'attempt' is used throughout the argument in its ordinary sense as equivalent to 'endeavour' and not, as it must be in the second place, where it occurs, in the legal sense, in which it is used in sections 305 and 511. Further if the word is used in its legal sense throughout, a threat to attempt to commit suicide is not only different from one to commit suicide, but is, like other threats to commit an attempt, a contradiction in terms. For an attempt in the legal sense can be recognized as such only after the criminal's intention has been frustrated, not when it is expressed; that is, when the threat is made.

The remaining contention relied on is that the Code implicitly forbids suicide, because in sections 506 and 309 it explicitly forbids abetment of it and attempt to commit it. But this will advance the argument, only if it corresponds with some general principle; and it does not as regards abetment. For, apart from the cases of abetment of children and lunatics, it is not suggested that acts done without guilty knowledge or intention (and therefore innocently), but which nevertheless can be abetted, under section 108, Explanation 3, are forbidden. The principle, if there is one, is therefore sustainable only subject to these exceptions. But, even so, reference to it is useless. For it is not shown that it can be tested by application to any instance, except the case of suicide, with which we are concerned; and there is no more security for its validity, when such test is impossible, than for the validity of respondents' argument as applied to that case alone.

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Respondents must therefore succeed, if at all, on the single and direct contention that in the case of suicide a prohibition can be inferred from the prohibition of attempts to commit it: and with all respect, having decided in favour of a strict construction of section 15, Indian Contract Act, I cannot accept it. No doubt the only species of prohibition, employed in the Code, the specification of a penalty, would be useless in this case. But it does not follow that the failure to employ the other, direct prohibition, or to make provision for the case of suicide in the Contract Act was due to inadvertence and that the omission should be supplied by inference. For it is possible that provision was omitted deliberately, because cases for its application would be rare and their truth difficult to establish, the party alleged to be coerced having usually easier means of preventing the accomplishment of the threat than by entering into the agreement, sought to be avoided.

· Holding that respondents cannot succeed on section 15, I turn to section 16 on which they also rely. In this connexion the threat of suicide is irrelevant, since Swami, who made it, was not a party to the contract; and there is no finding of fact, which would support any exercise of undue influence by the parties to the contract, appellants. This plea therefore fails.

As the majority of the court would dismiss the appeal with reference to section 15, respondents' other contentions have not been heard. On the view I take, it would be necessary to consider them before the appeal could be disposed of.

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SESHAGIRI AYYAR, J.—I agree with the judgment of the learned CHIEF JUSTICE.

I do not think that the evidence in this case is sufficient to warrant a finding on the question of undue influence. On the question of coercion, although I had some doubts in the beginning, I have come to the conclusion that the facts do bring the case within section 15 of the Indian Contract Act. Mr. Patanjali Sastri argued that threatening to commit suicide is not forbidden by the Indian Penal Code. A man who commits suicide goes unpunished, because the law cannot reach him, and not because the offence is not forbidden. The Code makes a person who abets the committing of suicide punishable. It also reaches a man who attempts to commit suicide. Although therefore there is no provision in the Indian Penal Code which forbids in

terms the commission of suicide, there can be no doubt that the intention of the legislature is to forbid such an act. I agree with Mr. Venkatarama Ayya that the term 'any act forbidden by the Indian Penal Code' is wider than the term 'punishable by the Indian Penal Code.' Simply because a man escapes punishment, it does not follow that the act is not forbidden by the Indian Penal Code. For example, a lunatic or a minor may not be punished. This does not show that their criminal acts are not forbidden by the Indian Penal Code. On the same analogy, a man who commits suicide escapes punishment because by committing the act, he is out of the reach of the law. Where the abetment of it and the attempt to do it are both made punishable by the Indian Penal Code, I am prepared to hold that the act itself is one forbidden by the Indian Penal Code.

The second contention of the learned vakil was that the threat to commit suicide could not have prejudiced the plaintiff. I agree with him that mere sentimental prejudice is not what the law contemplates. As pointed out in *The Queen v. The Metropolitan Board of Works*(1), some legal injury must flow in order that the man may be said to have been prejudiced; see also *Clark v. London General Omnibus Company, Limited*(2). Accepting this test, I am unable to hold that the wife to whom the threat was addressed by a husband that he would commit suicide in case she did not execute a document is not prejudicially affected by such a threat. In my opinion the possibility of the husband dying leaving the wife and the child uncared for is sufficient in the eye of the law to furnish the ground of prejudice. On this ground, I agree with Mr. Justice SADASIVA AYYAR in thinking that Exhibit A was brought about by the use of coercion and that it should be set aside.

The appeal should be dismissed with costs.

N.B.

(1) (1863) 3 B. & S., 710.

(2) (1906) 2 K.B., 648.