

VENKATA
REDDI
v.
RANI SAREBA
OF
WADHWAN.
Lord SHAW.

Their Lordships will humbly advise His Majesty that this appeal stand dismissed with costs.

Appeal dismissed.

Solicitor for the appellants: *Douglas Grant.*

Solicitor for the respondent: *T. L. Wilson & Co.*

J.V.W.

PRIVY COUNCIL.*

POOSATHURAI (PLAINTIFF),

v.

KANNAPPA CHETTIAR AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature at
Madras.]

1919,
October 23,
24, 27 and
November,
18.

Contract Act (IX of 1872), section 16 (1)—Undue influence—Onus of proving undue influence—Suit to cancel contract on ground of undue influence—Domination of will must be put in action.

To treat undue influence as having been established by proof of the relations of the parties having been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it, is erroneous. That merely proves influence. But both by the Law of India and the Law of England more than mere influence must be established so as to render it, in the language of the law, 'undue'. It must be established that the person in a position of domination has used that position to obtain unfair advantage for himself and so as to cause injury to the person relying upon his authority or aid.

When the relation of influence as above set forth has been established, and it is also made clear that the bargain is with the person who influences the other, and is in itself unconscionable, then the person in a position to use his dominating power has the heavy burden thrown on him of proving affirmatively that no domination was practised so as to bring about the transaction; but that the grantor of the deed was scrupulously kept separately advised in the independence of a free agent.

In the circumstances of the present case their Lordships were of opinion it had not been proved as an essential part of the plaintiff's case that the contract of sale come to was unconscionable in itself or constituted an advantage unfair to the plaintiff.

APPEAL No. 3 of 1918 from a judgment and decree (50th July 1912) of the High Court at Madras (MILLER AND ABDUE RAHIM, JJ.) which reversed a decree of S. RAMASWAMI AYYANGAR, Subordinate Judge of Madura.

*Present:—Lord SHAW, Lord PHILLIMORE, Sir JOHN EDGE, Mr. AMEER ALI, and Sir LAWRENCE JENKINS.

The suit giving rise to this appeal was brought against the present respondents by the appellant to set aside a sale-deed, dated 17th March 1906, executed by him in favour of the third defendant Kannappa Chettiar on the ground of fraud, and undue influence exercised over him by the first and second defendants who were maternal uncles of the appellant. Misrepresentation and want of consideration was further alleged against all three defendants.

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The Subordinate Judge found on the evidence that the allegations in the plaint had been made out, and he made a decree setting aside the decree, on condition that the appellant paid to the first respondent the sum of Rs. 6,725 and interest.

On appeal the High Court dismissed the suit on the ground that 'undue' influence had not been proved.

For the purpose of this report the circumstances of the case and the evidence are sufficiently given in the judgment of the Judicial Committee.

ON THIS APPEAL—

Sir H. Erle Richards, K.C. and *B. Dubé* for the appellant.

De Gruyther, K.C. and *Kenworthy Brown* for the respondent were not called upon.

The JUDGMENT of their Lordships was delivered by

Lord SHAW.—This suit has been brought by the present appellant for the cancellation of a deed of sale executed by him on 17th March 1906. Cancellation was decreed by the Subordinate Judge, and the decision was reversed by decree of the High Court of Judicature at Madras. Lord SHAW.

The real and only point at issue between the parties is whether the deed in question should be cancelled on the ground of undue influence. In the Court of the Subordinate Judge this point did not clearly appear from the issues which were framed. But an examination of the proceedings and evidence shows that it is to an issue of this kind that the plaintiff was throughout groping. The High Court properly discerned that; and the learned Counsel for the appellant properly presented the case from that point of view.

It is not necessary to speculate whether the provisions of the Indian Contract Act differ in any particulars from the doctrines of the English Law upon this subject. For no such

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differences are suggested to have any bearing on the issue between these parties. The issue in the present suit is an issue of fact, and there does not appear to the Board to be any sufficient reason for doubting that the judgment arrived at in the High Court is sound.

The Indian Contract Act by section 14 provides that

“Consent is said to be free if it is not caused by
undue influence as defined by section 16.”

By section 16 (1)

“the contract is said to be induced by ‘undue influence’ where the relations existing between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.”

Sub-section 3 of the same section may also be referred to. It provides that

“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, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other.”

It is a mistake (of which there are a good many traces in these proceedings) to treat undue influence as having been established by a proof of the relations of the parties having been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it. Up to that point ‘influence’ alone has been made out. Such influence may be used wisely, judiciously and helpfully. But, whether by the Law of India or the Law of England, more than mere influence must be proved so as to render influence, in the language of the law, ‘undue.’ It must be established that the person in a position of domination has used that position to obtain unfair advantage for himself, and so to cause injury to the person relying upon his authority or aid.

And where the relation of influence, as above set forth, has been established, and the second thing is also made clear, viz., that the bargain is with the ‘influencer’ and in itself unconscionable: then the person in a position to use his dominating power has the burden thrown upon him, and it is a heavy burden, of establishing affirmatively that no domination was practised so as to bring about the transaction, but that the

grantor of the deed was scrupulously kept separately advised in the independence of a free agent.

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These general propositions are mentioned, because if laid alongside of the facts of the present case, then it appears that one vital element—perhaps not sufficiently relied on in the Court below, and yet essential to the plaintiff's case—is wanting. It is not proved as a fact in the present case that the bargain of sale come to was unconscionable in itself, or constituted an advantage unfair to the plaintiff; it is, in short, not established as a matter of fact that the sale was for undervalue.

Lord SHAW.

The subject of the sale, to mention only one particular, was not the two villages mentioned in the plaint, but the property in the villages burdened with usufructuary mortgages which did not expire for eighteen years. These mortgages amounted to Rs. 51,000. The crucial enquiry on the point of sufficiency of consideration accordingly was, what on the date of the sale was the *de presenta* value of the plaintiff's right of property in these villages? Beyond a loose reference to a lakh of rupees, without any specification as to whether this referred to the present value, or to deferred value, or to value of the property, the evidence is entirely silent.

Nothing has been brought in argument before the Board to satisfy their Lordships' minds that the price of Rs. 6,000, even coupled with the demand for the wiping off of a debt of about Rs. 3,000, incurred for litigation and for the honouring by the plaintiff of a promissory note executed by him for another Rs. 3,000, was not a fair consideration for the transaction.

Their Lordships think it unnecessary to enter into the further grounds stated by the learned Judges of the High Court for their decision, although they express no disagreement with these grounds in themselves.

The true contradictor in the issue was the party to the transaction, the vendee. But the plaintiff endeavoured to strengthen the case for cancellation by convening also as defendants his two uncles, now also his two fathers-in-law.

Their Lordships do not doubt that in the category of cases of undue influence might be covered cases where the party to a transaction exercised that influence in conspiracy with or through the agency of others. But they think it right to say

POOSATHURAI that no proof has been given of any such conspiracy or agency
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When it is added that the consideration paid was in part
 Lord SHAW, actually defrayed to cover expenses incurred by the plaintiff on
 the occasion of his marriages to the two daughters of his uncles,
 the first and second defendants, and that these marriages took
 place, it would require fairly strong evidence to induce any
 Court to give countenance to the suggestion that his uncles and
 fathers-in-law had conspired with the third defendant to subject
 the plaintiff to unconscionable loss. To this element weight is
 properly attached in the Court below.

Their Lordships humbly advise His Majesty that the appeal
 stand dismissed with costs.

Appeal dismissed.

Solicitors for the appellant : *Chapman, Walker and Shephard.*
 Solicitor for the respondents : *Douglas Grant.*

J. V. W.

*
 PRIVY COUNCIL.*

KRISHNA AYYANGAR (PETITIONER),

v.

NALLAPERUMAL PILLAI (OPPOSITE PARTY).

[On appeal from the High Court of Judicature
 at Madras.]

*Company—Charge given by resolution of Company to its Secretary on unpaid
 calls for special services rendered to the Company—Failure to register charge
 —Duty of officers to register neglected—India Companies Act (VI of 1882),
 s. 68—Explanation—Mode of construction—Proceedings in Legislative Council
 cannot be referred to to aid construction.*

The question in this appeal was whether a charge given to the appellant,
 the Secretary of a Limited Company upon unpaid calls, could be enforced
 by him although not registered as required by section 63 of Act VI of 1882
 (Indian Companies Act), which section required registration of all mort-
 gages and charges specifically affecting property of the company, and imposed
 a penalty upon any official of the company who knowingly and wilfully
 authorizes or permits the omission of such entry in the register. The decision

* *Present* :—Viscount FINLAY, Lord SUMNER, and Lord PARMOOR.