

PRIVY COUNCIL.*

CHINTAMANIBHATLA VENKATA REDDI PANTULU
GARU AND ANOTHER (PLAINTIFFS),

1919,
November
18.

v.

RANI SAHEBA OF WADHWAN (DEFENDANT).

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

*Hindu Law—Alienation—Alienation by widow—Onus of proof of legal necessity—
Suit to set aside an alienation after long lapse of time—Presumptions to
complete proof.*

The suit which gave rise to this appeal was one by a reversioner to set aside an alienation by a widow made in 1830 on the ground that it was made without legal necessity. The widow died on the 15th December 1900, and the suit was instituted on 12th December 1912 involving an inquiry into the circumstances of a transaction more than 82 years after it took place. The District Court found that there was no legal necessity for the sale and decreed the suit. The High Court held that legal necessity had been proved and reversed the judgment of the Trial Judge. In the course of their judgment they said "It is not disputed that the onus lay upon the defendant to prove the necessity for the sale, but having regard to the great lapse of time since the transaction took place, perhaps the highest on record, it will not be reasonable to expect such full and detailed evidence as to the state of things which gave rise to the sale in question as in the case of alienations made at more recent dates. In such circumstances presumptions are permissible to fill in the details which have been obliterated by time." Their Lordships of the Judicial Committee in affirming the decision of the High Court cited the above with approval as being in their opinion a correct statement of the law.

APPEAL No. 157 of 1917 from a judgment and decree (29th February 1916) of the High Court of Madras (ABDUR RAHIM and PHILLIPS, JJ.), which reversed a judgment and decree (7th October 1914) of G. H. B. JACKSON, Acting District Judge of Vizagapatam.

The suit which gave rise to this appeal was brought by the appellants against the respondent to recover possession of an estate belonging to one Ananta Rao in the district of Vizagapatam. The claim in the plaint was that the appellants were the next reversioners of Ananta Rao the last male holder of the estate who died in 1829 leaving a widow Hanumayamma and a daughter, and that the widow had on 5th May 1830 sold

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the estate to one Goday Suraprakasa from whom it became ultimately vested in the respondent. The appellant's case was that the sale was not binding on them as it had been made by the widow without any legal necessity, and whether or not that was the case was the main question for determination in the present appeal.

The widow Hanumayamma died on 15th December 1900 and the present suit was instituted more than 82 years after the sale, and within three days of its liability to be barred by limitation, namely on 12th December 1912.

The respondent pleaded (*inter alia*) that the sale of the estate was for necessity, and bound the heirs. The District Judge on the evidence was of opinion that the length of time that had elapsed since the sale and since the widow's death could not affect the case, because when once the appellants had proved that they were the next reversioners they were entitled to a decree unless the respondent proved that the sale was justified by legal necessity; that the result of the authorities as to what constituted such necessity was that if there was actual pressure such as an outstanding decree on impending sale, a widow was at liberty within a reasonable latitude to sell such part of the property as would meet that necessity; but that in the present instance, though an estimate was made at the time of sale showing arrears of Government revenue and other debts amounting in all to Rs. 16,500, the whole of this amount was not actually payable at the time; and the widow's privilege of selling to pay off debts without compulsion must in his opinion be confined to debts actually payable; that though one of the appellant's witnesses had proved that the widow was under the impression that she must sell in order to pay the Government revenue, and she very probably was so informed at the time, with the actual figures now before it the Court could form a better estimate than could have been formed then by a distracted widow; and he thought that after making the highest possible estimate of her husband's liabilities she had in fact a reasonable prospect of liquidating them (and could well have liquidated them) within five years. The question, therefore, was whether under these circumstances she was justified in selling, though not pressed by any process of attachment, and he knew

of no accepted definition of necessity which would permit of any but a negative answer to this question. Although therefore he found that the price paid was a fair one, he held that there was no legal necessity for the sale and decreed the suit with mesne profits and costs.

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From that decision the respondent appealed to the High Court and the appellants filed cross-objections under Order XLI, rule 22, of the Code of Civil Procedure, 1908.

The High Court in reversing the decree of the District Judge said that the enormous lapse of time since the sale took place must necessarily make some difference in the amount of evidence that could reasonably be demanded from the respondent in support of the transaction, and that the District Judge did not appear to have kept this obvious consideration in view in dealing with the case. On the evidence, the High Court was of opinion that the presumptive heirs had had full opportunity of inquiring into and ascertaining the actual facts relating to the sale, and their silence and inaction for such a long time (though they could have brought a declaratory suit) undoubtedly raised a certain presumption that they knew the sale was for necessity; that the history of the estate showed that it was always a source of anxiety to whoever happened to hold it; and that during the time it was owned by Ananta Rao's family the latter were in a chronic state of indebtedness, and that there could be little doubt but that if Ananta Rao had lived he would himself have had to part with it; that Ananta left debts to the extent of Rs. 7,000 besides the liability for his funeral expenses; and that his widow had apparently nothing in the way of assets except the estate, which was a difficult one to manage with any substantial profit; that at the time of the sale the Government revenue for April, Rs. 5,000, was in arrear and unless it was promptly paid the estate would be sold by Government; that on 15th May another instalment of revenue amounting to Rs. 4,647. would be payable; that these two instalments and such of Ananta's debts as were then actually due made up together more than Rs. 14,000 which the widow had to meet, and all she had in hand was grain worth about Rs. 1,870; that the balance must have been raised either by loan or sale; that on the most favourable calculation the utmost net average income realizable from the estate was Rs. 1,500 out of which the widow had to pay her husband's debts and funeral expenses,

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and maintain herself and her daughter, and must therefore inevitably have borrowed for the purpose, which she would have had great difficulty in doing. And the High Court held that she was not bound to wait until the very last moment when she would be pressed for payment either by suits or letters of demand; that the law did not compel her, where (as they found was the case in this instance) the debts amounted to the full value of the property, to go on borrowing on the mere chance that at some distant date she might be able to realize sufficient income to discharge the debts, but allowed her discretion to judge what was the best course of action in the interest of the estate as well as of herself; and that having regard to all the facts the sale under consideration was in their opinion a very clear case of actual necessity and was inevitable. They accordingly allowed the appeal and dismissed the suit with costs throughout.

ON THIS APPEAL

De Gruyther, K.C., and *B. Dube*, contended that the respondent had failed to discharge the onus which lay on her of proving that the sale was made for legal necessity. The District Judge rightly says the widow was not being pressed by any process of law and could easily have paid off all the debts within a reasonable time. The length of the period that has elapsed since that sale is less material because there is documentary evidence which made clear what the position was in 1880 when it took place. [*Uppjohn, K.C.*, referred to *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri*(1).] The evidence of necessity was recited in the deed in that case: in the present case the deed was not produced. The weight of evidence was on the whole in favour of the appellant as was rightly held by the District Court.

Uppjohn, K.C., *Sir William Garth, K.C.*, and *J. M. Parikh*, for the respondent, were not called on.

The JUDGMENT of their Lordships was delivered by
Lord SHAW. — This is an appeal from a decree of the High Court of Madras, dated 29th February 1916. It reversed a decree of the District Court of Vizagapatam, dated 7th October 1914.

The object of the suit, which was by a reversioner, was for the purpose of setting aside a deed of sale—an alienation by a widow: and the pinch of the case, as argued in the Courts below and before their Lordships, is whether that alienation is challengeable on the ground that it is made without legal necessity. The sale took place so far back as 5th May 1830. The widow in question survived that sale by no less a period than 70 years, she having died on 15th December 1900. The suit in the present case was instituted in the year 1912, within a few days from the expiry of the period of limitation under the statute. It results accordingly that the investigation subsequent to the initiation of the suit in 1912 was an investigation with regard to the circumstances of a transaction more than 82 years after that transaction took place.

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In these circumstances their Lordships—the case being singular in these points of date—are moved to repeat as part of their own judgment the following propositions, which represent, in their view, both the sense as well as the law of the situation so disclosed. In the judgment appealed from, the learned Judges of the High Court lay down the law as follows :—

“It is not disputed that the onus lay upon the defendant to prove the necessity for the sale, but having regard to the great lapse of time since the transaction took place, that is, about 82 years, perhaps the highest on record, it will not be reasonable to expect such full and detailed evidence as to the state of things which gave rise to the sale in question as in the case of alienations made at more or less recent dates. In such circumstances, presumptions are permissible to fill in the details which have been obliterated by time.”

Their Lordships adopt that statement of the law.

They desire indeed only to add that it is matter of some surprise that so much documentary evidence still remains: and from a perusal of it and the whole proceedings in the case they see no cause to doubt that the decree pronounced by the High Court is one which ought to be affirmed. They have the less reason to doubt this on account of the argument of the appellants presented to the Board, which appears to have exhausted every avenue of attack open to a person challenging an ancient transaction.

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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.