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by the justice of the case. In this case we are satisfied that the order passed by the learned Assistant Collector fully met the justice of the case, and that we would not be justified in interfering with that order in our revisional jurisdiction.

The application, therefore, fails and is rejected with costs.

Application rejected.

APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan and Mr. Justice
Mohammad Raza.*

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January, 11.

PARBHU (PLAINTIFF-APPELLANT) v. PUTTU AND OTHERS
(DEFENDANTS-RESPONDENTS).*

*Contract Act (IX of 72) section 16—Unconscionable bargains
—Undue influence—Inference as to influence exercised
being “undue”—Benefit received under the transaction
—Compensation, liability for.*

The plaintiff, who was an ignorant, illiterate poor young man of about 20 or 21 years in age, became entitled to a half share in the inheritance of his uncle amounting to Rs. 16,000 or more. The defendant taking advantage of his position offered their help to recover this inheritance for the plaintiff and got a sale-deed of a 10 annas share of his entire interest in the inheritance while he was not even aware of the extent of that inheritance. The defendants had started proceedings section 145 of the Code of Criminal Procedure to which the plaintiff and his vendees were parties. Those proceedings were terminated by a compromise and the plaintiff was held entitled to Rs. 4,000 in lieu of his share in the inheritance. The plaintiff then brought the present suit against the vendees.

Held, that in view of the provisions of section 16 of the Indian Contract Act the terms of the transactions being unconscionable and wholly on the side of the influencer it follows as a corollary that the influence exercised by the

* First Civil Appeal No. 74 of 1924, against the decree of Damodar Rao Kelkar, Additional Subordinate Judge of Sitapur, dated the 6th of August, 1924.

defendants was undue and the transaction induced thereby must be set aside unless the defendants discharged the onus of showing that they did not exercise such influence. The fact that the plaintiff had been benefitted by the transaction could not stand in the way of the plaintiff in getting the sale-deed set aside. [L. R., 47 I. A., p. 1; L. R., 21 I. A., p. 101, referred to.

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Held further, that though the transaction failed on the ground of being brought about by undue influence the defendants were entitled to compensation from the plaintiff the measure of which would be the expenditure which they incurred on behalf of the plaintiff in recovering his share in the inheritance. [L. R., 20 I. A., 127, followed.]

Messrs. *M. Wasim* and *N. C. Dutt*, for the appellant.

Mr. *S. N. Roy*, for the respondents Nos. 2 and 7.

Mr. *H. D. Chandra*, for the respondents Nos. 3, 4 and 5.

HASAN and RAZA, JJ.:—This is the plaintiff's appeal from the decree of the Subordinate Judge of Sitapur, dated the 6th of August, 1924. There were seven defendants to the suit out of which this appeal arises. Deo Dat, Mata Prasad and Debi Din were defendants Nos. 5, 6 and 7, respectively. On the merits of the case we are clearly of opinion that Deo Dat, Mata Prasad and Debi Din should not have been made parties to this suit. No cause of action in favour of the plaintiff is established as against them; but the plaintiff not only made them parties to the suit in the lower court but he has also persisted in making them parties to the appeal which is now before us for decision.

The facts of the case are very simple. One Ram Narain was possessed of immovable property in the shape of houses and shops in the town of Sitapur.

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He was also possessed of movables in the shape of hardwares which were the articles of his trade. Ram Narain died on the 10th of February, 1923. The plaintiff is the son of one of the sisters of Ram Narain. Puttu defendant No. 1 and Sammi defendant No. 2 are the sons of another sister of Ram Narain. It is common ground that on the death of Ram Narain the inheritance in respect of Ram Narain's property opened to the plaintiff and to the defendants Puttu and Sammi under ordinary Hindu law. It is also not disputed that under the same law the plaintiff became entitled to one half share in Ram Narain's estate and the remaining half devolved upon the two defendants just now mentioned.

The plaintiff had all along lived in the district of Kheri. His parents died in his infancy. For some time he lived with his uncle Baldeo Prasad. Then he moved to the house of his father's sister in village Ludhowri in the district of Kheri. He was at that place when Ram Narain died, and according to the evidence in the case was about 20 to 21 years of age. One Bihari brought to him the information of the death of Ram Narain. Accordingly the plaintiff came to Sitapur. His uncle Baldeo Prasad was his companion. The story which the plaintiff gives in his evidence on oath in this case is that he stayed during his visit to Sitapur at the house of Munnu Lal defendant No. 3. This is not denied. On the second day of his arrival we find the plaintiff executing a deed of sale in respect of 10 annas share of his entire interest in the estate of his deceased uncle Ram Narain in favour of Munnu Lal defendant No. 3 and another person Babu Ram defendant No. 4. It appears that Sammi defendant No. 2 had taken action under the provisions of section 145 of

the Code of Criminal Procedure. The proceedings which were thus initiated were terminated by a compromise to which the plaintiff, his two cousins Puttu and Sammi and his vendees Munnu Lall and Babu Ram were parties. According to that compromise the plaintiff was declared to be entitled to Rs. 4,000 in all in lieu of his share of inheritance in the estate of his uncle Ram Narain. Puttu and Sammi were to pay this sum of money in equal moieties. By way of adjusting the claim of the plaintiff under the compromise Puttu delivered utensils worth Rs. 2,000 to the plaintiff's vendees Munnu Lal and Babu Ram, and Sammi gave Rs. 1,000 in cash to the same gentlemen. Munnu Lal and Babu Ram then paid to the plaintiff a sum of Rs. 1,212 and it is agreed that they have retained the balance of Rs. 1,788 with them.

In this suit the plaintiff seeks relief against his vendees as well as against his cousins Puttu and Sammi. He can get relief as against Munnu Lal and Babu Ram by first getting rid of the deed of sale which he executed in their favour on the 5th of March, 1923, and as against Puttu and Sammi by avoiding the compromise which was entered into for the purpose of bringing to an end the proceedings under section 145 of the Code of Criminal Procedure. The learned Subordinate Judge has refused to give any of these reliefs to the plaintiff but he has given a decree for 6/16th share of Rs. 1,000 in favour of the plaintiff against Sammi only and curiously enough has passed a decree for costs against Puttu. The plaintiff and Puttu have both appealed against the decree of the learned Subordinate Judge.

So far as Puttu's appeal is concerned (Appeal No. 66 of 1924), it may be disposed of in few words. We find no justification for the decree which the

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learned Subordinate Judge has passed against Puttu in the matter of costs. Puttu satisfied the entire liability which was imposed upon him under the compromise and the trial court has granted no relief to the plaintiff as against Puttu. Puttu's appeal must, therefore, be allowed.

In arguing the plaintiff's appeal before us the learned counsel for the plaintiff did not press his client's case in the matter of the compromise. Indeed the evidence which the plaintiff himself gave in the case is quite clear on the point that he understood the compromise with all its details and gave his free consent to it. The ground which was pressed in support of the appeal was that the sale-deed of the 5th of March, 1923, executed by the plaintiff in favour of Munnu Lal and Babu Ram, was obtained from the plaintiff by these persons under undue influence. It appears to us that the learned Subordinate Judge has not dealt with this aspect of the plaintiff's case in a proper spirit. He disposed of the plaintiff's plea of undue influence on the ground that the plaintiff was fully aware of the contents of the deed of sale though he was an illiterate person. On our part we have come to the conclusion that the plea of undue influence in respect of the deed of sale mentioned above succeeds. Now, what are the facts which have a bearing on that plea? This inheritance suddenly opens on the death of Ram Narain. The plaintiff lives far away from the place where Ram Narain's property is situated. He receives news of Ram Narain's death and goes to Sitapur. It is clear on the evidence that he had no knowledge either of the extent or value of the properties of which Ram Narain was possessed. He goes straight to Munnu Lal's house and before he had any opportunity of making any enquiries as to Ram

Narain's assets we find him executing the deed of sale in favour of Munnu Lal and his colleague Babu Ram. The plaintiff had shortly before this come of age. There is nothing to show that he had had any experience of the affairs of the world. He is admittedly an illiterate person. His companion Baldeo Prasad was equally an ignorant villager though advanced in age. The defendants offered to help him and before the value of the properties which were to devolve on the plaintiff could, to any reasonable extent, be ascertained the plaintiff parts with 10 annas share in the inheritance. The consideration set forth in the deed of sale is Rs. 1,500 with a condition that if the whole or any part of it was not spent by the vendees in recovering the plaintiff's share from the hands of his cousins the plaintiff will not be entitled to call for any account or to recover any portion of it from the vendees. We have it in the evidence of plaintiff's witness No. 1 who is in all respects a reliable and independent witness, that the plaintiff's mental capacity is not of a good order. According to this witness the plaintiff is almost a fool, and in the matters under consideration he could say nothing one way or the other. Babu Ram went into the witness box and gave evidence in the case. He says that when Ram Narain died estimate was being made of his properties to the extent of Rs. 30,000 or Rs. 40,000, including ornaments, guineas, cash, notes and utensils and all other property, movable and immovable. Even when a settlement was reached the value of the property was estimated at Rs. 16,000. We have thus before us a case of an ignorant, illiterate and a poor young man, on whom a right to the inheritance of his deceased uncle had devolved and who is a fool. On the other hand, we have the defendants Nos. 3 and 4

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Munnu Lal and Babu Ram offering their help to recover this inheritance for the plaintiff as volunteers and making a bargain with him which is entirely on their side and wholly unconscionable. On these facts we hold that Munnu Lal and Babu Ram were in a position to dominate the will of the plaintiff in the matter of the sale-transaction. This being the position on the facts and the terms of the transaction being unconscionable and wholly on the side of the influencer, it follows as a corollary that the influence exercised by these defendants was "undue" and the transaction induced thereby must be set aside unless the defendants discharged the onus of showing that they did not exercise such influence. In support of the argument the learned Counsel for the appellant referred to a large number of English authorities on the subject which would allow relief to a person placed as the plaintiff is in the exercise of equitable jurisdiction of the courts. We are, however, of opinion that it would not be safe to rely upon all the principles which have been acted upon by courts of Equity in England in cases of this nature, though there is no doubt that there are principles of general application which would govern the present case as well. But those principles are to be found to underlie the provisions of section 16 of the Indian Contract Act, 1872. According to that section the first necessary element in a case of undue influence is to see whether the person who is said to have exercised it was, or was not, in a position to dominate the will of the other person. Once it is established that he was, sub-section (3) will apply if the transaction appears to be unconscionable. We have held in the present case that Munnu Lal and Babu Ram were in a position to dominate the plaintiff's will and the instrument of sale on the face of it

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is unconscionable. Under sub-section (3) the burden of proving that the contract was not induced by undue influence lies upon Munnulal and Babu Ram. We are of opinion that they have not succeeded in discharging that onus. The view which we have taken of the provisions of section 16 of the Indian Contract Act is supported by two recent decisions of their Lordships of the Privy Council in the cases of *Poosathurai v. Kannappa Chettiar and others* (1) and *Raghunath Prasad v. Suraj Prasad and others* (2). On these grounds we are satisfied that the sale-deed of the 5th of March, 1923 was executed by the plaintiff under the undue influence which the defendants Nos. 3 and 4 exercised on him in the matter of that transaction. The result is that the sale-deed cannot stand in the way of granting relief to the plaintiff as against these defendants in so far as they have been benefitted by the transaction to which the sale-deed relates.

It was argued that these defendants would in any case be entitled to compensation, the measure of which would be the expenditure which they incurred on behalf of the plaintiff in recovering his share in the inheritance of his uncle. This is a perfectly sound argument and must be accepted. There is authority in support of it—see the case of *Rajah Mokham Singh and others v. Rajah Rup Singh* (3). But unfortunately for these defendants there is no reliable evidence of any expenditure to any large extent, though it is impossible to conceive that they did not incur any expenditure. We believe the statement of defendant No. 4 Babu Ram in so far that he engaged a pleader for purposes of the proceedings under section 145 of the Code of Criminal Procedure and we also believe his statement that he paid about Rs. 50 or

(1) L.R., 47 I.A., 1.

(2) L.R., 51, I.A., 101.

(3) L.R., 29 I.A., 127.

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Rs. 60 to that pleader. There must also have been some incidental expenses relating to the same proceedings. We would, therefore, allow a sum of Rs. 100 to the defendants Nos. 3 and 4 by way of compensation.

The result is that we allow this appeal and set aside the decree of the lower court and in lieu thereof pass the following decree. The plaintiff is given a decree for the sum of Rs. 1,000 against Sammi, defendant No. 2. He is also given a decree for Rs. 1,688 against Munnu Lal and Babu Ram defendants Nos. 3 and 4. His suit against the other defendants, including Puttu, is dismissed altogether. Under the circumstances we direct that there will be no costs to any person in either courts.

The defendants Nos. 2 to 4 are ordered to pay the court-fee amounting to Rs. 797-8 which is due from the plaintiff out of the sum for which the plaintiff's claim has been decreed against them, the court-fee being the first charge on the subject-matter of the suit. They should deposit the amount in the court, and in case they fail to do so the same shall be recoverable from them by the Government.

Appeal allowed.