

Privy Council Appeal No. 3 of 1918.

Poosathurai - - - - - *Appellant*

v.

U.L.K.K.N.K.E. Kannappa Chettiar and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1919.

Present at the Hearing :

LORD SHAW.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*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 the 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.

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 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." Subsection 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 granter of the deed was scrupulously kept separately advised in the independence of a free agent.

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.

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 that no proof has been given of any such conspiracy or agency in the present case.

When it is added that the consideration paid was in part 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.

In the Privy Council.

POOSATHURAI

v.

U.L.K.K.N.K.E. KANNAPPA CHETTIAR AND
OTHERS.

DELIVERED BY LORD SHAW.

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