Privy Council Appeal No. 20 of 1935

A. V. Palanivelu Mudaliar - - - - - - *Appellant*

v.

Neelavathi Ammal and another - - - - - *Respondents*

FROM

THE COURT OF RESIDENT IN MYSORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JANUARY, 1937

Present at the Hearing :

LORD ROCHE.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL].

On the 26th January, 1925, three sisters, who were the defendants in the action which has led to this appeal, executed in favour of the plaintiff a promissory note for Rs.15,000. They agreed to pay him this sum, for the services rendered by him in the management of their joint estate, with interest at the rate of 1 per cent. per mensem from the date of the note until the date of payment. No payment was, however, made to him, with the result that he commenced in January, 1928, the present action to recover Rs. 20,000, the principal and interest due on the document; and in the alternative he claimed that amount as remuneration for his services from March, 1920, to January, 1928.

The first defendant, who was married to the plaintiff, did not contest the suit; but her two younger sisters denied the due execution of the promissory note by them, and raised other pleas to defeat the claim. On the issues, which arose on the pleadings, the Trial Judge pronounced his judgment in favour of the plaintiff, and granted a decree for the amount claimed by him with costs. Against that decree, the two contesting defendants preferred an appeal, which was allowed by the Court of Appeal, and the suit was dismissed with costs as against them. But a decree was granted for one-third of Rs.20,000 against the first defendant who had not disputed her liability in either of the two Courts.

From the decree of the Appellate Court the plaintiff has brought this appeal against the two younger sisters (hereinafter to be described as the respondents), who alone had resisted his suit in the Courts below. The first point for determination is whether he can maintain the suit on the promissory note.

The facts of the case relevant to the questions raised before their Lordships may be shortly stated. The defendants were the daughters of one Murugesa Mudaliar, who died in November, 1916, without leaving any male

issue. He owned a large and valuable estate, and soon after his death disputes regarding the partition of the estate arose between his widow on the one side and his collaterals on the other side. These disputes were referred to arbitration, and the widow stood in need of the services of a reliable person who could represent her before the arbitrators. She had a brother, Neela Kanta Mudaliar; and he consented, and was authorised, to act on her behalf in the arbitration proceedings. He did not, however, prove to be either efficient or honest in the discharge of his duties; and after the death of the widow his services were dispensed with in March, 1920.

It was at this stage that the plaintiff was asked by the defendants to take over the management of the estate and to carry on the proceedings before the arbitrators. He acceded to their request, and managed the estate, and acted as their agent in other affairs from March, 1920, until the institution of the suit in January, 1928. After he had worked for five years, he demanded his remuneration for the services performed by him, and the defendants, who had no money to pay at that time, executed the promissory note in question for Rs.15,000. The note was admittedly signed by all the defendants, but the respondents sought to avoid their liability on various grounds. It is, however, unnecessary to mention here all the pleas advanced by them, because they were over-ruled by the Trial Judge, and his decision has been endorsed by the Court of Appeal, save in respect of the plea of undue influence. As regards the claim on the note the learned counsel for the parties have confined their arguments to this defence, and after considering the matter their Lordships are not prepared to dissent from the conclusion reached by the Court of Appeal.

The onus of proving undue influence ordinarily rests on the party who sets up that plea, but the circumstances of this case make it an exception to the general rule. As stated above, the plaintiff was married to the eldest sister, and it appears that she was in a position to influence her younger sisters. They had lost, not only their father, but also their mother, before they signed the document promising to pay a large sum of money. It is true that both of them were *sui juris* at that time, but the youngest girl had attained her majority only about a month or two before she was asked to sign the promissory note.

But the circumstance, which has an important bearing upon the issue of undue influence, is that the plaintiff as their agent stood to them in a position of active confidence. As enacted by section 111 of the Indian Evidence Act, I of 1872, the burden of proving the good faith of the transaction is on the party who was in a position of active confidence.

It is admitted by the plaintiff that he had got a draft of the promissory note prepared by a lawyer, and then dictated it to the second sister, who wrote the note so dictated to her. Such procedure is plainly open to exception. Moreover, the note makes all the executants jointly and severally

liable for the payment of the entire sum, and this covenant would enable him to recover the whole of the amount from either of the two younger sisters, leaving her to demand contribution from the other sisters, a remedy which might be of doubtful efficacy.

In view of these facts their Lordships agree with the Appellate Court that the plaintiff was in a position to dominate the will of each of the respondents, and that the necessary proof of good faith was not forthcoming. Whether the case comes within the purview of section 111 of the Indian Evidence Act, or section 16 of the Indian Contract Act, IX of 1872 ,the onus in either case was upon him; and he has failed to discharge it.

The claim on the basis of the promissory note has been rightly dismissed as against the respondents. But as laid down by section 19A of the Indian Contract Act, "when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused." It will be observed that the contract is not void but merely voidable; and it is binding upon the first defendant, whose consent was not caused by undue influence. Indeed, she not only did not raise the plea of undue influence, but admitted her liability on the promissory note. The Trial Judge gave a decree for the money due on the document, and from that decree only her younger sisters preferred an appeal. As she did not challenge the decree, the Court of Appeal, endorsing the finding of the Trial Court that she was liable to satisfy one-third of the claim, upheld the decree against her for Rs.6,666, annas 10, and pies 8. It is only the plaintiff who has brought this appeal, and there is no suggestion either by him, or by the respondents, that the decree against the consenting defendant should, in any way, be modified. Indeed, she is not a party to this appeal, and the decree against her must be maintained.

But whilst the appellant thus fails to enforce his claim on the promissory note against the respondents, this failure does not involve the dismissal of his alternative claim to recover remuneration for the services rendered by him to them. In support of this claim he invokes section 70 of the Indian Contract Act, which is in these terms:—

> "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

It is not disputed that the plaintiff rendered services to the respondents lawfully, and that the latter enjoyed the benefit thereof. The only question is whether while doing their work he did not intend to act gratuitously. On this issue there is a difference of opinion between the Courts in India; the Trial Judge found in favour of the appellant, but his view was not accepted by the Court of Appeal. To determine the question their Lordships must examine all the circumstances which have a bearing upon it.

There can be little doubt that the task, which he undertook in March, 1920, in pursuance of the request of the defendants, was not an easy one. It appears that the estate left by their father consisted of a share in several immovable properties, in which his collaterals also were interested. They contested the claim of his heirs to their share of the estate, and the latter had to face a stubborn resistance. The disputes were referred to arbitration, but the proceedings before the arbitrators were complicated as well as protracted. The maternal uncle, who originally represented them, had not worked satisfactorily, and the accounts kept by him were found to be inaccurate. He was, therefore, removed from the office of the manager, and it was then that the plaintiff consented to take over the management of their estate and to look after their affairs. He served them for nearly eight years, and during that period he not only brought the arbitration proceedings to a successful conclusion and recovered for them an estate worth more than Rs.400,000, but also rendered numerous other services. These services are set out in the judgment of the Trial Judge and need not be recapitulated here. Suffice it to say, that he undertook a variety of duties which, performed, as they were, with honesty and assiduity, proved beneficial to the defendants.

Now, the question of whether compensation should, or should not, be awarded must depend upon the intention of the appellant at the time of his doing the thing for which he demands the compensation. He is, obviously, the proper person to state what his intention was; and his testimony on this matter deserves consideration. What does he say? In his deposition before the Court he gives a long list of the multifarious duties performed by him during the period of eight years, and relates the benefits derived by the defendants from his services. He makes it clear that he was under the impression that he would receive remuneration for those services and it cannot be predicated about a person who expected remuneration that he intended to act gratuitously.

The plaintiff's evidence was believed by the Trial Judge, who had the advantage of observing the demeanour of the witness; but the learned Judge of the Court of Appeal does not think that he, being the husband of one of the sisters and the brother-in-law of the other two sisters, did the work "with the expectation of some remuneration." This argument cannot be sustained, especially as it is not in harmony with the circumstances of the case. It must be remembered that the appellant was a young man, who had passed the first part of the examination prescribed for the B.A. degree, and was preparing for the final part of that examination. Was it likely that he would give up his studies and throw away all prospects of a career in life, in order to undertake, without expecting any remuneration, the laborious and tedious task of recovering their estate from their opponents, who were both formidable and resourceful? He knew that Neela Kanta Mudaliar had already failed in the performance

of the work, and while the society, to which the defendants belonged, may expect the maternal uncle to help his nieces without any payment, no such sacrifice can reasonably be contemplated from a person occupying the position of a son-in-law. Indeed, neither the parents-in-law nor the members of their family would, unless afflicted with poverty, consider it in consonance with their sense of honour or propriety, if they failed to reward him for the work which required labour and time for its performance. It is significant that even the maternal uncle was to receive as a reward for his work a house worth about Rs.9,000.

It is unreasonable to assume that the appellant, cognizant, as he was, of all these facts, consented to take over the arduous work, intending to do it without any payment, simply because he was married to one of the sisters. The estate was a valuable one, and the sisters were in affluent circumstances. His wife was entitled to only one-third of the estate, and even if he did not desire to be paid for the work done for her, he could adopt the course, which was likely to receive her approbation, of getting full remuneration for his services and then remitting to her one-third of the total amount received by him. This course would have the merit of his serving the wife without any payment, and recovering, at the same time, compensation for the time and labour devoted by him to the work of her sisters. They were undoubtedly in a position to pay, and, knowing, as they did, all the circumstances including the social sentiment as to such a matter they would not expect him to do their work without charging any remuneration.

The main ground, upon which the Appellate Court dissented from the Trial Court, cannot, therefore, be supported. Indeed, the circumstances relating to the execution of the promissory note in 1925 show that he did not intend to act gratuitously. It is clear that in January, 1925, he made a demand for the payment of his remuneration, but the sisters had no money to pay at that time, and gave the promissory note for the amount then due to him. The Court of Appeal thinks that it shows that " the idea of being remunerated appears first to have come to him in January, 1925 "; but what happened at that time proves much more than the fact that he did not intend to work gratuitously thereafter.

It is common ground that he was living in the same house with the defendants from the very beginning, and the question of whether he expected to be remunerated or not for his work would naturally be mentioned during the period of his residence. Their conduct is consistent with a knowledge of his expectations, when in 1925 he demanded remuneration for the work which he had done since March, 1920. There can be little doubt that, if he had told **them** or led them to believe that he was working gratuitously for them, they would have protested against his *volte face* in 1925, and demurred to his demand. But there was apparently no such protest or objection by them. They merely

expressed their inability to provide money at that time and signed the promissory note for " the sum of Rs.15,000 for having managed " their estate. Their conduct at that time is compatible only with the hypothesis that the demand did not come to them as a surprise, and that they knew that he must be paid, and this knowledge must have come to them from him.

This aspect of the question, which has been inadequately appreciated by the Appellate Court, furnishes a strong corroboration of the appellant's testimony. Their Lordships hold that he did not intend to act for the respondents gratuitously, and that he has established his claim to a reasonable compensation.

What should be a reasonable compensation for the services which have been already described? This matter may be disposed of in a few words. The Courts in India are in agreement that he is entitled to be paid at the rate of Rs.50 *per mensem* by each of the respondents for the period of his management, which amounts to about eight years. No objection has been, or can be, taken to this concurrent finding by the Courts below. The result is that the appellant should recover Rs.4,800 from each of the two respondents, and that he must get also the costs of this appeal. In the Trial Court he shall get three-fourths of his costs from the contesting defendants, but there will be no order as to the costs incurred in the Court of Appeal in India. The costs, if any, recovered by the respondents in pursuance of the decree of the Appellate Court shall be refunded by them to the appellant.

Their Lordships will humbly advise His Majesty that the appeal be accepted *pro tanto,* and the decree of the Appellate Court modified accordingly.

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DELIVERED BY SIR SHADI LAL

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