

IN THE PRIVY COUNCIL

No. 6 of 1979

32/81

O N A P P E A L

FROM THE FIJI COURT OF APPEAL

B E T W E E N :

1. RAJ KUMARI (d/o Lakhan Singh)
2. YENKAIYA NAIDU (s/o Appana)

Appellants
(Defendants)

- and -

SUBARMANI (s/o Ponsami)
representing the estate of
Ammi (d/o Nag Reddy) deceased

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB

Solicitors for the Appellants

A.L. PHILIPS & CO.
6 Holborn Viaduct,
London, EC1A 2AH

Solicitors for the Respondent

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

1. RAJ KUMARI (d/o Lakhan Singh)
2. YENKAIYA NAIDU (s/o Appana) Appellants
(Defendants)

- and -

SUBARMANI (s/o Ponsami)
representing the estate of
Ammai (d/o Nag Reddy) deceased Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE FIJI COURT OF APPEAL

B E T W E E N :

1. RAJ KUMARI (d/o Lakhan Singh)
 2. YENKAIYA NAIDU (s/o Appana) Appellants
(Defendants)

- and -

10 SUBARMANI (s/o Ponsami)
 representing the estate of
 Ammai (d/o Nag Reddy) deceased Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS AND
 STATEMENT OF CLAIM
 3rd June 1977

In the
Supreme Court

No.1
 Writ of
 Summons and
 Statement of
 Claim

DISTRICT REGISTRY

No. 109 of 1977

3rd June 1977

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
 AT LAUTOKA

20 Between: AMMAI daughter of Nag Reddy
 of Simla, Lautoka, Widow Plaintiff

And: RAJ KUMARI (daughter of
 Lakhan Singh) of Lomawai,
 Nadroga, Married Woman 1st Defendant

And: YENKAIYA NAIDU (son of
 Appanna) of Lomawai,
 Nadroga, Farmer 2nd Defendant

ELIZABETH the Second, by the Grace of God, Queen
 of Fiji and of Her other Realms and Territories,

In the
Supreme Court

No.1
Writ of
Summons and
Statement
of Claim

3rd June
1977

(continued)

Head of the Commonwealth.

To: RAJ KUMARI (daughter of Lakhan Singh) and
YENKAIYA NAIDU (son of Appanna)

both of Lomawai, Nadroga, Married Woman and
Farmer

WE COMMAND you, that within 8 days after the
service of this Writ on you inclusive of the
day of such service you do cause an appearance
to be entered for you in an action at the suit
of AMMAI daughter of Nag Reddy of Simla,
Lautoka, Widow and take notice that in default
of your so doing the plaintiff may proceed
therein, and judgment may be given in your
absence.

10

WITNESS the Honourable CLIFFORD H. GRANT
Chief Justice of Fiji, at Lautoka this 3rd
day of June 1977.

SHARMA, SINGH & CO.
per: Sgd. Illegible
Solicitor for the Plaintiff

20

NOTE. - This writ may not be served more than
12 calendar months after the above date
unless renewed by order of the Court.

DIRECTION OF ENTERING APPEARANCE

The Defendant may enter an appearance in
person or by a solicitor by handing in the
appropriate forms, duly completed, at the
Supreme Court Registry at Lautoka

NOTE. - Where the writ is indorsed with or
served with a statement of claim, if the
defendant enters an appearance, then, unless
a summons for judgment is served on him in the
meantime, he must also serve a defence on the
solicitor for the plaintiff within 14 days after
the last day of the time limited for entering
an appearance, otherwise judgment may be entered
against him without notice.

30

STATEMENT OF CLAIM (1)

The Plaintiff's claim is as per Statement of
Claim annexed hereto.

40

And, where the claim is for a debt or
liquidated demand the sum of \$25 (or such
sum as may be allowed on taxation) for costs,

and also, if the plaintiff obtains an order for substituted service, the further sum of \$12 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff, (he being resident within the jurisdiction), or his solicitor or agent within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

In the
Supreme Court

No.1
Writ of
Summons and
Statement
of Claim

3rd June
1977

(continued)

10 (1) Delete where not applicable.

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

DISTRICT REGISTRY

No. of 1977

BETWEEN: AMMAI daughter of Nag Reddy
of Simla Lautoka, Widow. Plaintiff

AND: RAJ KUMARI (daughter of
Lakhan Singh) of Lomawai,
Nadroga, Married Woman 1st Defendant

20 AND: YENKAIYA NAIDU (son of
Appanna) of Lomawai,
Nadroga, Farmer 2nd Defendant

STATEMENT OF CLAIM

1. The plaintiff is about 90 years old and lives in Simla, Lautoka with her son named Subarmani.
2. The first defendant is her eldest daughter and she lives in Lomawai, Nadroga.
- 30 3. The second defendant is the son of the first defendant who also resides in Lomawai, Nadroga.
4. The plaintiff is the registered proprietor of all that piece of Crown Land being No.68339 Lot 16 Section 43 and situate at Waiyavi, Lautoka.
5. That there is a concrete house built on the above land measuring 60' x 29' which today is valued at \$25,000.00 and at present is occupied by an employee of the Government of Fiji at a monthly rental of \$190.00.
- 40 6. That in or about July 1975 the plaintiff's

In the
Supreme Court

No.1
Writ of
Summons and
Statement
of Claim

3rd June
1977

(continued)

- said daughter the 1st defendant came to her in Simla, Lautoka and asked her to visit her at Lomawai, Nadroga for a few days.
7. That the plaintiff made preparations to go to Lomawai and took her suitcase which contained her following belongings :
- (a) 11 large gold sovereigns -
valued at \$68.00 each = \$748.00
 - (b) 3 bangles (made of 37 large
gold sovereigns) valued at 10
= \$2516.00
 - (c) First National City Savings
Bank Pass Book No. 002289
 - (d) Lease document for her land
as stated in paragraph 4 herein.
8. That the plaintiff always kept the items mentioned in paragraph seven herein with herself and the 1st defendant know that she would be taking the said items to her residence in Lomawai, Nadroga. 20
9. That on the 11th day of May 1977 the defendants fraudulently and by exercising undue influence caused a memorandum of Transfer of the plaintiff's said land purported to be executed by the plaintiff in the 2nd defendant's named by her left thumb mark and dated the 11th day of May 1977. An approval to the said transfer was granted on the following day by the Director of Lands of lands as the Lessor. 30
10. The defendants have not yet obtained the consent of the Native Land Trust Board to this purported sale.
11. That the plaintiff never executed the said transfer nor the consideration of \$8000.00 as stated in the said Transfer was ever paid by the defendants to the plaintiff.

PARTICULARS OF FRAUD

40

- (a) advised and influenced the plaintiff to believe that \$8000.00 represented a true and proper market value for the said property.

(b) prohibited the plaintiff from seeking an independent valuation of the said property.

(c) advised influenced and made the plaintiff wrongly believe that it was in her best interest to sell the said property.

In the
Supreme Court

No.1
Writ of
Summons and
Statement
of Claim

3rd June 1977

(continued)

PARTICULARS OF UNDUE INFLUENCE

10

(a) Both the defendants, in their position as daughter and grandson of the plaintiff assured to plaintiff and made her to believe that what the defendants were doing was for her own good.

(b) both the defendants assured the plaintiff that they would maintain, support and generally look after her as long as she lived.

20

11. The first and second defendants on the 29th of July 1975 told the plaintiff to close her Savings Bank Account No. 002289 with the First National City Bank (Lautoka Branch) and withdraw the account standing i.e. \$2648.69 and operate a new account with City Bank in Nadi and have kept the Savings Bank Pass book with them.

30

13. That while the plaintiff stayed with the defendants in Lomawai, Nadroga from July 1975 to May 1977 the defendants fraudulently and by exercising undue influence obtained from the plaintiff the sum of \$4148.13 in cash by withdrawing the following sums from her Savings Account No. 001114:

40

18/12/75	\$1000.00
"	1000.00
21/1/76	1200.00
23/3/76	700.00
29/4/76	330.00
3/12/76	89.00
8/3/77	570.00
11/5/77	<u>570.00</u>
	<u>\$5459.00</u>

Less paid to Director of Lands-Rent for the years 1976/77 in respect of lease stated in paragraph 4 herein 50.00

In the
Supreme Court

No.1
Writ of
Summons and
Statement
of Claim

3rd June
1977

(continued)

B/fwd	50.00
Less paid to Lautoka City Council Town Rates	
1976 83.18	
1977 93.94	177.12
Less paid deposit on the purported sale of the plaintiff's land	<u>1000.00</u> <u>\$1227.12</u>

14. That while the plaintiff stayed with the defendants in Lomawai Nadroga from July 1975 to May 1977 the defendants fraudulently and by exercising undue influence obtained from the plaintiff the said 11 gold sovereigns, the said 3 bangles and the said 3 rings. 10

PARTICULARS OF FRAUD

- (i) The defendants advised the plaintiff to withdraw all her money from Bank as it was not a safe place to keep money. 20
- (ii) The defendants advised the plaintiff that they would use the monies so withdrawn for her own purpose.

PARTICULARS OF UNDUE INFLUENCE

- The 1st and 2nd defendants told the plaintiff that they were her daughter and grandson respectively and would always look after her property and herself. 30
15. Of the monies so obtained from the plaintiff, the defendants paid \$1000.00 deposit on the purported sale of the plaintiff's said land and used the balance for their own use.
16. That the defendants now refuse to return the items as listed in paragraph 11 herein and they also refuse and/or neglect to refund to the plaintiff the sum of \$4231.88. 40

WHEREFORE the plaintiff claims against the defendants :-

- (a) A declaration that the said Memorandum

of Transfer alleged to have the left thumb mark of the plaintiff is fraudulent, null and void.

In the
Supreme Court

No.1

Writ of
Summons and
Statement
of Claim

3rd June
1977

(continued)

- 10 (b) An order directing the defendants to deliver up to the plaintiff the lease No. 68339.
- (c) An injunction restraining the defendants from proceeding to have the said transfer registered.
- (d) An order directing the defendants to give an account of all monies received by them from the plaintiff.
- (e) An order directing the defendants to refund \$4231.88 to the plaintiff.
- (f) An order directing the return of eleven large gold sovereigns, three gold bangles or alternatively full value thereof.
- 20 (g) Damages for causing the execution of such fraudulent transfer in the sum of \$2000.00.
- (h) Such further or other relief as to this Court may seem just.
- (i) Costs of this action.

DATED this 3rd day of June 1977

SHARMA, SINGH & CO.

per:

Sgd. J.R.Singh
Solicitors for the plaintiff.

In the
Supreme Court

No.2
Statement of
Defence

20th June
1977

No. 2

STATEMENT OF DEFENCE
20th June 1977

IN THE SUPREME COURT OF FIJI
AT LAUTOKA (WESTERN DIVISION)

DISTRICT REGISTRY
No. 109 of 1977

BETWEEN: AMMAI daughter of Nag Reddy of
Simila, Lautoka, Widow

PLAINTIFF 10

A N D : RAJ KUMARI (daughter of
Lakhan Singh) of Lomawai,
Nadroga, Married Woman

1ST DEFENDANT

A N D : YENKAIYA NAIDU (son of
Appanna) of Lomawai,
Nadroga, Farmer

2ND DEFENDANT

STATEMENT OF DEFENCE

1. The defendants admit paragraphs 1, 2, 3
and 4 of the Statement of Claim. 20

2. The defendants deny each and every
allegation contained in paragraphs 5, 6, 7, 8
and 9 of the Statement of Claim, but admit that
there is a concrete house on the land, and that
the plaintiff had brought certain jewellery
and items their house.

3. The defendants deny each and every
allegation contained in paragraph 9 and 10
of the Statement of Claim, but say that the
plaintiff made the transfer freely and
voluntarily, and was not influenced in any way. 30
The defendants further admit that the consent
of the Native Land Trust Board has not been
obtained to this transaction.

4. In answer to paragraph 11 of the Statement
of Claim, the defendants say that the plaintiff
executed a transfer, and a mortgage, and the
transaction was carried out by a firm of
solicitors, namely Messrs. B.K.Pillay & Co.
acting for both parties. The defendants made 40
no misrepresentations to the plaintiff.

5. The defendants deny each and every

allegation contained in paragraph 11 of the Statement of Claim.

In the
Supreme Court

6. The defendants deny each and every allegation contained in paragraph 12 of the Statement of Claim, and say that the sums mentioned therein were withdrawn by the plaintiff to her own account.

No.2
Statement of
Defence

20th June
1977

(continued)

10 7. The defendants deny each and every allegation contained in paragraph 14 of the Statement of Claim, and deny that they took any jewellery of the plaintiff.

8. The defendants deny each and every allegation contained in paragraphs 15 and 16 of the Statement of Claim.

DELIVERED this 20th day of June, 1977

R A M R A K H A S

Per; (Sgd) K.C.Ramrakhas
Solicitors for the
Defendants.

20

No. 3

AMENDED STATEMENT OF
CLAIM - 29th June 1977

No.3
Amended
Statement
of Claim

29th June
1977

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

DISTRICT REGISTRY
No. 109 of 1977

BETWEEN: AMMAI (daughter of Nag Reddy)
of Simla, Lautoka, Widow Plaintiff

30 AND: RAJ KUMARI (daughter of
Lakhan Singh) of Lomawai,
Nadroga, Married Woman 1st Defendant

AND: YENKAIYA NAIDU (son of
Appanna) of Lomawai,
Nadroga, Farmer 2nd Defendant

AMENDED STATEMENT OF CLAIM

1. The plaintiff is about 90 years old and lives in Simla, Lautoka with her son named Subarmani.

In the
Supreme Court

No.3
Amended
Statement
of Claim

29th June
1977

(continued)

2. The first defendant is her eldest daughter and she lives in Lomawai, Nadroga.
3. The second defendant is the son of the first defendant who also resides in Lomawai, Nadroga.
4. The plaintiff is the registered proprietor of all that piece of Crown Land being No.68339 Lot 16 Section 43 and situate in Waiyavi, Lautoka.
5. That there is a concrete house built on the above land measuring 60' x 29' which today is valued at \$25,000.00 and at present is occupied by an employee of the Government of Fiji at a monthly rental of \$190.00. 10
6. That in or about July 1975 the plaintiff's said daughter the 1st defendant came to her in Simla, Lautoka and asked her to visit her at Lomawai, Nadroga for a few days. 20
7. That the plaintiff made preparations to go to Lomawai and took her suitcase which contained her following belongings:
 - (a) 11 large gold sovereigns -
valued at \$68.00 each = \$748.00
 - (b) 3 bangles (made of 37
large gold sovereigns)
valued at = \$2516.00
 - (c) Three gold rings valued
at = \$150.00 30
 - (d) First National City
Savings Bank Pass Book
No.002289
 - (e) Lease document for her land
as stated in paragraph 4 herein.
8. That the plaintiff always kept the items mentioned in paragraph seven herein with herself and the 1st defendant knew that she would be taking the said items to her residence in Lomawai, Nadroga. 40
9. That on the 11th day of May 1977 the defendants fraudulently and by exercising undue influence caused a memorandum of Transfer of the plaintiff's said land

purported to be executed by the plaintiff in the 2nd defendant's name by her left thumb mark and dated the 11th day of May 1977. An Approval to the said transfer was granted on the following day by the Director of Lands as the Lessor.

In the
Supreme Court

No. 3
Amended
Statement
of Claim

10. The defendants have not yet obtained the consent of the Native Land Trust Board to this purported sale.

29th June
1977

(continued)

- 10 11. That the plaintiff never executed the said transfer nor the consideration of \$8000.00 as stated in the said Transfer was ever paid by the defendants to the plaintiff.

PARTICULARS OF FRAUD

(a) advised and influenced the plaintiff to believe that \$8000.00 represented a true and proper market value for the said property.

20 (b) prohibited the plaintiff from seeking an independent valuation of the said property.

(c) advised influenced and made the plaintiff wrongly believe that it was in her best interest to sell the said property.

PARTICULARS OF UNDUE INFLUENCE

30 (a) Both the defendants, in their position as daughter and grandson of the plaintiff assured the plaintiff and made her to believe that what the defendants were doing was for her own good.

(b) Both the defendants assured the plaintiff that they would maintain, support and generally look after her as long as she lived.

40 12. The first and second defendants on the 29th day of July, 1975 told the plaintiff to close her Savings Bank Account No. 002289 with the First National City Bank (Lautoka Branch) and withdraw the amount standing in the said account, that is \$2648.00 and open up a new savings account with the First National City Bank in Nadi. The said new savings account No. is 001114 and is in the name of the plaintiff.

13. The defendants have since then kept the

In the
Supreme Court

No.3
Amended
Statement
of Claim
29th June
1977
(continued)

abovementioned (No.001114) Savings
Bank Pass book with them.

14. That while the plaintiff stayed with the defendants in Lomawai, Nadroga from July 1975 to May 1977 the defendants fraudulently and by exercising undue influence obtained from the plaintiff the sum of \$5459.00 in cash by withdrawing the following sums from her abovementioned Nadi City Bank Savings Account No.001114. 10

<u>Dates</u>	<u>Amount</u>	
18/2/75	\$1000.00	
"	1000.00	
21/1/76	1200.00	
23/3/76	700.00	
29/4/76	330.00	
3/12/76	89.00	
8/3/77	570.00	
11/5/77	570.00	
	<u>\$5459.00</u>	20

15. That from \$5459.00 mentioned in paragraph 14 above herein, the defendants used \$1227.12 as follows :

Less paid to Director of Lands-
Rent for the years 1976/77 in
respect of lease stated in
paragraph 4 herein 50.00

Less paid to Lautoka City
Council Town Rates

1976	83.18		
1977	<u>93.94</u>	<u>177.12</u>	30
		<u>\$227.12</u>	

Less paid deposit on the
purported sale of the
plaintiff's land. 1000.00 \$1227.12

PARTICULARS OF FRAUD

- (i) The defendants advised the plaintiff to withdraw all money from Bank as it was not a save place to keep money.
- (ii) The defendants advised the plaintiff that they would use the monies so withdrawn for her own purpose. 40

PARTICULARS OF UNDUE INFLUENCE

In the
Supreme Court

No. 3
Amended
Statement
of Claim

29th June
1977

(continued)

The first and second defendants told the plaintiff that they were her daughter and grandson respectively and would always look after her property and herself.

- 10 16. That while the plaintiff stayed with the defendants in Lomawai Nadroga from July 1975 to May 1977 the defendants fraudulently and by exercising undue influence obtained from the plaintiff the said 11 gold sovereigns, the said 3 bangles and the said 3 rings.

PARTICULARS OF FRAUD

- (i) The defendants advised the plaintiff to give them the said gold jewellery for safe keeping.

PARTICULARS OF UNDUE INFLUENCE

20 The first and second defendants told the plaintiff that they were her daughter and grandson respectively and would always look after herself and her said jewellery.

17. Of the monies so obtained from the plaintiff, the defendants paid \$1000.00 deposit on the purported sale of the plaintiff's said land and used the balance for their own use.
- 30 18. That the defendants now refuse to return the items as listed in paragraph 7 herein and they also refuse and/or neglect to refund to the plaintiff the sum of \$5459.00.

WHEREFORE the plaintiff claims against the defendants :-

- (a) A declaration that the said Memorandum of Transfer alleged to have the left thumb mark of the plaintiff is fraudulent, null and void.
- 40 (b) An order directing the defendants to deliver up to the plaintiff the lease No.68339.
- (c) An injunction restraining the defendants from proceeding to have the said transfer registered.
- (d) An order directing the defendants to

In the
Supreme Court

No.3
Amended
Statement
of Claim
29th June
1977
(continued)

give an account of all monies received
by them from the plaintiff.

- (e) An order directing the defendants to
refund \$5459.00 to the plaintiff.
- (f) An order directing the return of eleven
large gold sovereigns, three gold
bangles, three gold rings or alternatively
full value thereof.
- (g) Damages for causing the execution of
such fraudulent transfer in the sum of 10
\$2000.00.
- (h) Such further or other relief as to
this Court may seem just.
- (i) Costs of this action.

DATED this 29th day of June, 1977.

SHARMA, SINGH & CO.

per: Sgd. Illegible

Solicitors for the plaintiff

No.4
Amended
Statement
of Defence
1st February
1978

No. 4

AMENDED STATEMENT OF DEFENCE
1st February 1978

20

IN THE SUPREME COURT OF FIJI
AT LAUTOKA (WESTERN DIVISION)

DISTRICT REGISTRY
No. 109 of 1977

BETWEEN: AMMAI daughter of Nag Reddy of
Simila, Lautoka, Widow PLAINTIFF

A N D : RAJ KUMARI (daughter of
Lakhan Singh) of Lomawai,
Nadroga, Married Woman 1ST DEFENDANT 30

A N D : YENKAIYA NAIDU (son of
Appanna) of Lomawai,
Nadroga, Farmer 2ND DEFENDANT

AMENDED STATEMENT OF DEFENCE

1. The defendants admit paragraphs 1, 2, 3 and
4 of the Statement of Claim.
2. The defendants admit, in answer to

paragraph 5 of the Amended Statement of Claim that there is a house on Lease 68339, but deny that the same can be valued at \$25,000:00.

In the
Supreme Court

No.4
Amended
Statement
of Defence

1st February
1978

(continued)

3. The defendants, in answer to paragraph 6 of the Amended Statement of Claim, state that the plaintiff often stayed with them.

10 4. The defendants in answer to paragraph 7 of the Amended Statement of Claim, admit that the plaintiff brought with her certain belongings and jewellery.

5. The defendants admit in answer to paragraph 8 of the Amended Statement of Claim that they knew that the plaintiff would bring certain belongings with her, but deny that they knew specifically what she would bring.

20 6. The defendants in answer to paragraph 9 of the Statement of Claim admit the plaintiff executed a Memorandum of Transfer as stated therein, and that the said transfer was approved by the Director of Lands. Save as herein admitted the defendants deny that they exercised any undue influence on the plaintiff, or were guilty of fraud. They say that the plaintiff was independently advised, and made the transfer freely and voluntarily, and that Messrs. B.K. Pillay & Co. Solicitors of Nadi acted for both parties.

7. The defendants admit paragraph 10 of the Amended Statement of Claim.

30 8. In answer to paragraph 11 of the Amended Statement of Claim, the defendants say that the plaintiff did execute the transfer and the consideration in the sum of \$8000:00 was paid as expressed in the transfer, namely by payment of \$1000:00 upon consent being granted and the balance sum of \$7000:00 was secured by a first mortgage over the lease and duly executed by the second defendant. The defendants deny that they made any representations to the
40 plaintiff over the value of the property or in any way prevented the defendant from seeking a valuation.

9. In answer to paragraph 12 of the said Amended Statement of Claim, the defendants admit that the plaintiff withdrew certain sums from the Savings Bank account as alleged therein, but say that the sums were withdrawn for the benefit of, and on account of the plaintiff.

In the
Supreme Court

No.4
Amended
Statement
of Defence
1st February
1978
(continued)

10. The defendants deny paragraph 13 of the Amended Statement of Claim.

11. In answer to paragraph 14 of the Amended Statement of Claim, the defendants deny each and every allegation contained therein but admit that the plaintiff withdrew certain sums for her benefit and her own account. The defendants deny that they acted fraudulently or exercised any undue influence on the plaintiff.

12. In answer to paragraph 15 of the Amended Statement of Claim, the defendants deny that they used any money of the plaintiff as alleged therein, and deny that they ever told the plaintiff not to keep any money in the bank or they would act as banker for the plaintiff. 10

13. In answer to paragraph 16 of the Amended Statement of Claim, the defendants deny that any jewellery was left with them for safekeeping or they ever asked the plaintiff to give any jewellery to them for safekeeping, or exercised any undue influence or made any promises as alleged therein. 20

14. The defendants deny each and every allegation contained in paragraph 17 of the Amended Statement of Claim, and say that the sum of \$1000.00 paid by them was their own.

AMENDED STATEMENT OF DEFENCE delivered by
leave
this 1st day of February, 1978

R A M R A K H A S 30

Per: (Sgd) K.C.Ramrakhas

This Amended Statement of Defence is delivered by RAMRAKHAS the solicitors for the defendants whose address for service is at the office of the said solicitors at Room 6, Victoria Arcade, Suva, Fiji.

No. 5

PROCEEDINGS
17th February 1978

In the
Supreme Court

No.5
Proceedings

17th February
1978

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

Civil Jurisdiction

Action No. 109 of 1977

Before the Hon. Mr. Justice Williams, Judge
Friday the 17th day of February, 1978 at 9.30 a.m.

10 Between: AMMAI d/o Nag Reddy Plaintiff

- and -

RAJ KUMARI d/o Lakhan Singh
1st Defendant

YENKAIYA NAIDU s/o Appanna
2nd Defendant

Mr. Jay Raj Singh, Counsel for the Plaintiff
Mr. Anu Patel, Counsel for the 1st Defendant
and 2nd Defendant, for Mr. Ramrakha

SUMMONS UNDER ORDER 39 RULE 1

Mr. J.R. Singh:

20 The witness to be excused is over 90 years.
The trial date is 14th March. She has been ill.
The amended Statement of Claim is based on what
she has said. She may be a difficult witness=
and it may be necessary to treat her somewhat
differently.

Mr. A. Patel:

Mr. Ramrakha was out of the country. Can
the plaintiff's evidence be taken now and cross-
examination deferred unto the return of Mr.
Ramrakha.

30 Court:

If anything occurred to the witness her
unchallenged evidence would be on record.

Mr. A. Patel:

Then I will cross-examine her.

In the
Supreme Court

Plaintiff's
evidence

No.6
Ammai Reddy
Examination
17th February
1978

No. 6

AMMAI REDDY - 17th
February 1978

AMMAI REDDY - Sworn in Hindi

I was born in India. My husband is dead.
I live in Lautoka.

I am more than 90 years of age. I came
during the indenture system.

RAJ KUMARI (first defendant) is my
daughter and Yenkaiya Naidu (2nd defendant) is 10
the son of the first defendant.

I own Crown Land No. 68339 Lot 16 Section
43 at Waiyavi, Nadroga. There is a concrete
house on the land.

It is rented. It is worth more than
\$2,000.00.

In July 1975 my daughter, defendant No.1
did not take me to Lomowai. I went there to
live with them. They robbed me and then I
returned. 20

I took some clothing and 2 or 3 boxes
of belongings with me. There were clothes,
money and jewellery in the boxes and some
sovereigns.

I stayed at Lomowai for a year with the
defendant No.1.

I did not sell my house to Yenkaiya
(defendant No.2) they cheated me. I have not
received a single penny for the house.

When I was sick and having a bath someone 30
took the lease from my box and my belongings.
The box was opened with a key.

The lease shows it was transferred to
Yenkaiya Naidu (defendant 2). I never wanted
to sell it to anybody. They forcibly got me
to fix my thumb print; I was yelling; I was
crying. There was only one lawyer.

(N.B. Demonstrates how daughter picked her
from rear and son of daughter pressed her
thumb). 40

The lawyer lives at Lomaloma.

The office is in Nadi. It was a clerk in the lawyer's office. He was writing things down.

I had about \$10,000.00 to \$14,000.00 in the bank.

It was withdrawn. I do not know how it came to be used.

10 My Nadi, City Bank Savings Account is marked closed. I see my savings book. I am now told it is marked closed.

I never went to a bank. I do not know what a bank is, I had my money in a box. I see a yellow savings account book. I have never seen it before.

I am told my name appears in it.

Ex. P.1 Savings Account book City Bank at Lautoka.

20 I am shown another bank savings book for Bank of New Zealand. I am told it has my name in it.

Ex. P.2 Savings Book. B.N.Z. Nadi Branch.

I know nothing of Ex. P.2.

I have drawn a lot of money from the bank in the past two years. My daughter was asking for money. There was other money remaining in the bank. My daughter stole it.

30 I knew it was stolen because I found it was used up. She bought lots of things from the shop. I must have forgotten to lock the bag.

I had some thick golden bangle; Latchman the jeweller made it during the indenture system. My husband got it for me. It was of gold sovereigns. It costs £10-£15 in those days.

I had some gold sovereigns I left them in a box. My daughter has taken them.

40 I had a golden necklace. The sovereigns were on a piece of cloth. There were sixty.

In the
Supreme Court

Plaintiff's
evidence

No.6
Ammal Reddy
Examination

17th February
1978

(continued)

In the
Supreme Court

Plaintiff's
evidence

No.6
Ammal Reddy
Examination
17th February
1978

(continued)

Cross-
examination

I had five gold rings. They were cheaper
in those days. One cannot get them nowadays.

The second defendant has the lease.
He refuses to give it to me.

I want the defendants to return to me
all the money and jewellery they have stolen.

Cross-examination Mr. A. Patel:

I had not visited my daughter before.
They called me to this place and took my
boxes.

10

I had a daughter Dulari who has died.

I did not live with my son, Subarmani
when Dulari was alive.

Q. You alleged that Subarmani ill-treated
you?

A. He could not. He was a school boy.

Q. You asked Defendant 1 to take you
because Subarmani was ill-treating you?

A. I deny that.

Q. The police escorted you from Subarmani's
house?

20

A. No, that is not correct. I kept my bags
and boxes in my house at Lautoka. I
was in a room in my daughter's house i.e.
in Raj Kumari's house.

I stayed with my son in Lautoka. My
boxes were in his house.

I was receiving \$70.00 per month and I
put it in the box when there was no one
around.

30

Q. Can you recall the occasion when you
went to the lawyer's office about the
lease?

A. My daughter got hold of my hand. The
clerk got me to put my thumb print on
two documents.

Q. You wanted Yenkaiya (your grandson) to
have the land?

A. No.

Q. Mr. B.K.Pillai explained the transaction to you?

In the
Supreme Court

A. He was not there.

Plaintiff's
evidence

Q. After he spoke to you you applied your thumb print?

No.6
Ammai Reddy
Cross-
Examination

A. They forced me to do it. I was crying.

Q. The monies drawn from the bank you used?

17th February
1978

A. It was not in the bank. It was in the box.

(continued)

10 Mr. A. Patel:

In view of the witness's mental state I do not propose to try and question her further.

(Sgd) J.T. Williams
JUDGE

N.B.

20 The witness is obviously very old and very feeble minded. She is chattering constantly and whispering. She is certainly very dependant and whatever may be needed to support her case will largely depend on 3rd parties. It is obvious that she will be virtually at the mercy of any relative or person with whom she resides or who is looking after her.

I have communicated the above comments to the advocates.

(Sgd) J.T. Williams
JUDGE

Adjourned to the hearing date already fixed
i.e. 14/3/78.

30

(Sgd) J.T. Williams
JUDGE

In the
Supreme Court

No.7
Proceedings

14th March
1978

No. 7

PROCEEDINGS - 14th
March 1978

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

Civil Jurisdiction

Action No. 109 of 1977

Before the Hon. Mr. Justice Williams, Judge
Tuesday the 14th day of March, 1978 at 9.30 a.m.

Between:

10

AMMAI d/o Nag Reddy

Plaintiff

- and -

1. RAJ KUMARI d/o Lakhan Singh

2. YENKAIYA NAIDU s/o Appanna

Defendants

Mr. Jai Raj Singh, Counsel for the Plaintiff
Mr. Ramrakha, Counsel for the Defendants

Mr. J.R.Singh (plaintiff):

Wish to put in a document showing amounts
withdrawn from plaintiff's account.

Ramrakhas:

20

No objection.

Order:

Accordingly as Ex. P.3.

(Sgd.) J.T. Williams
JUDGE

No. 8

PARAM ANAN SINGH
14th March 1978

In the
Supreme Court

Plaintiff's
evidence

No.8

Param Anan
Singh
Examination

14th March
1978

P.W.2 - PARAM ANAN SINGH - Sworn, English

I am a valuer, Auctioneer, and Estate Agent.

Reside at Simla Heights, Lautoka.

Have been in profession for 43 years.

10 Valued Crown Lease 68339 Lot 16, Section 43 in Waiyavi, owned by Amai. I see the valuation I prepared. It is a conservative valuation.

N.B. By consent - valuation put in.

Ex. P.4

Valuation dated 4/3/78. It is at about 75% of standard valuation.

Cross-examination:

There is a depression in property sales at present and so the valuation is conservative.

20

(Sgd.) J.T. Williams
JUDGE

Cross-
examination

No. 9

SUBARMANI PONSAMI
14th March 1978

No.9

Subarmani
Ponsami
Examination

14th March
1978

P.W.3 - SUBARMANI PONSAMI - Sworn, Hindi

I live at Simla, Lautoka.

I am a real estate agent. Ammai (plaintiff) is my mother.

1st defendant is my sister.

30

Ammi now lives with me. Before July 1975, before she went to Lomawai she was living with me.

On 17th July 1975 she went to Lomawai.

In the
Supreme Court
Plaintiff's
evidence

No.9
Subarmani
Ponsami
Examination
14th March
1978

(continued)

1st Defendant came to my neighbour.
I saw her. A boy came to my house. He
spoke to my mother - plaintiff. My mother
went to the neighbour's. She told me she
would be away for an hour.

My sister - 1st defendant - did not
come to my place.

My mother returned and said she was
going to 1st defendant's house for a week.

I saw my mother leave with 2 suit
cases - boxes - made of wood - about
2' x 1½' x 1'. They had tools. She left my
house on Friday at 1.00 p.m. She was with
Raj Kumari - 1st defendant. 10

I knew the contents of the boxes. They
held clothings and jewellery - sovereigns,
3 rings. Mother kept boxes locked and the
key with her. She was in Lomowai with
defendant 1 for a year and 10 months.

In 1976 I went to see plaintiff at
Lomowai to inform her of repairs which needed
to be done to the house. The tenancy with
the Director of Lands had expired. I saw
plaintiff and told her. 20

Defendant 1 was not at home and both
plaintiff's boxes were in defendant 1's room -
she (plaintiff) told me this.

In 1977, May, I again visited the
plaintiff. I had paid income tax for plaintiff
for 1974 and I had received a cheque for
\$34.10. Defendant 1 was at home. The
plaintiff said she wished to return with me.
Defendant 1 said she would bring my mother
back to Lautoka. 30

Defendant 1's house is 2 miles from
main road.

I brought plaintiff away with me -
after I had been to Sigatoka police station
and obtained assistance of 2 constables. It
was about 6.15 p.m. We were in a police van.
My mother got in the van. Her boxes were put
into it. 40

We received her 2 bank books from
defendant No.2. We came home.

Plaintiff opened her boxes at my house.

All jewellery was not there - none of it was there.

I saw that the account with the City Bank had been closed.

The rent from Plaintiff's house was \$190.00 per month.

Cross-examination by Mr. Ramrakha:

I did not assume she took her gold to Lomowai.

10

It was always in the boxes.

Q. The plaintiff sued you?

A. No. I did not examine the boxes.

Q. You received a summons?

A. Yes. But it was not of her own volition.

I went to Court. The plaintiff discontinued the action.

(Sgd.) J.T. Williams
JUDGE

20

Close of Plaintiff's case.

No. 10

PROCEEDINGS - 14th
March 1978

No.10
Proceedings

14th March 1978

Mr. Ramrakha:

We will call no evidence.

I submit that nothing has been proved in this case. I feel in view of Court's remarks that the plaintiff's evidence can be ignored.

30

Whatever the property was sold for is not absurdly low. It cannot lead to an inference of fraud in mother/daughter transactions.

The evidence for plaintiff is very weak.

In the
Supreme Court

Plaintiff's
evidence

No.9
Subarmani
Ponsami
Examination

14th March
1978

(continued)

Cross-
examination

In the
Supreme Court

No.10
Proceedings

14th March
1978

(continued)

There has been no copy of the Crown lease, mortgage, transfer documents. There is no basic matter before this Court which can only dismiss this case.

There is no presumption of undue influence.

Ask that this be dismissed with costs.

(Sgd.) J.T.Williams
JUDGE

Plaintiff - J.R.Singh:

10

Am surprised at the statement that nothing has been proved.

We have proved that an old woman of 95 years has been swindled.

Incapable - obviously - of looking after herself.

At mercy of whoever looked after her.

The Crown Lease and other documents are not in our possession.

₹8,000.00 is manifestly low.

20

(Sgd.) J.T.Williams
JUDGE

Order:

Deferred to a date to be notified.

(Sgd.) J.T.Williams
JUDGE

No. 11

JUDGMENT - 30th March
1978

In the
Supreme Court

No.11
Judgment

30th March
1978

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

Civil Jurisdiction

Action No. 109 of 1977

Before the Hon. Mr. Justice Williams, Judge
Thursday the 30th day of March, 1977 (sic) at 9.30 a.m.

10 Between:

AMMAI d/o Nag Reddy Plaintiff

- and -

1. RAJ KUMARI d/o Lakhan Singh
2. YENKAIYA NAIDU s/o Appana Defendants

Mr. J. R. Singh, Counsel for the Plaintiff

Mr. G.P. Shankar for A. Patel, Counsel for
the Defendants.

JUDGMENT DELIVERED

(Sgd.) J.T. Williams
JUDGE

20

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

Civil Jurisdiction

Action No. 109 of 1977

Between:

AMMAI d/o Nag Reddy

Plaintiff

- and -

1. RAJ KUMARI d/o Lakhan Singh

2. YENKAIYA NAIDU s/o Appana

Defendants

Mr. J.R.Singh, Counsel for the Plaintiff

10

Mr. A. Patel, Counsel for the Defendants.

JUDGMENT

The plaintiff in this action is 90 years of age or more. At present she lives in Simpla, Lautoka, with her son Subarmani.

In July 1975 she went to stay with her daughter (deft.1) and grandson (deft.2) at Lomawai, Nadroga.

At that time she held a lease of Crown Land, No. 68339, Lot 16 Section 43 in Waiyavi, Lautoka. She also had two wooden cases containing clothing, jewellery and other personal effects in addition to a Savings Bank book No. 002289 with the First National City Bank which she took with her to Lomowai.

20

The plaintiff stayed at Lomawai with the 2 defendants for a year and 10 months and then returned to reside with her son Subarmani (P.W.3). The latter says that on her return the plaintiff opened her wooden boxes and there was no jewellery in them.

30

The Statement of Claim alleges that on 11th May 1977 the defendants purchased the above land which has a house on it for \$8,000; and that during her stay with the defendants the plaintiff transferred her savings account to the Nadi branch and she withdrew \$5,459 and that her jewellery was taken by the defendants.

It is alleged that the plaintiff was persuaded by the defendants to part with her aforesaid property, money and jewellery by the exercise of undue influence.

40

The Statement of Claim asks for an order directing the defendants to deliver up the said lease to the plaintiff and to refund the \$5,459 and to return 11 gold sovereigns, 3 gold bangles and 3 gold rings or the value thereof.

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

The Statement of Defence para.4 admits that the plaintiff brought jewellery with her to Lomawai.

10 Para.8 thereof admits arranging the transfer of the house and land to the defendants at a price of \$8,000 of which \$1,000 was paid in cash and the balance of \$7,000 secured by way of mortgage.

Para.9 admits the plaintiff drew sums of money from the savings bank but alleges it was for her own use.

Undue influence and fraud were denied.

20 The evidence of the plaintiff was taken in February 17th 1978 prior to the hearing date because she had been ill. It was apparent from her evidence that she was aware that she possessed jewellery in the form of sovereigns and necklace of sovereigns; she also knows that she owned a house and had money in the bank. She remembered going to a solicitor's office in connection with a sale of the house, but said she did not wish to sell it. Regarding the withdrawal of
30 money from the bank she says that the deft. No.1 kept pressing her for money.

When she had given her evidence I made the following note in the record:

40 "This witness is obviously very old and very feeble minded. She is chattering constantly and whispering. She is certainly very dependent and whatever may be needed to support her case will largely depend upon third parties. It is obvious that she will be virtually at the mercy of any relative or person with whom she resides or who is looking after her.

I have communicated the above comments to the advocates."

The hearing was resumed on 14/3/78 on which date the plaintiff's son Subarmani (P.W.3)

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

gave evidence to the effect that the deft.No.1 had arrived in Lautoka and invited the plaintiff to stay with her for a while.

P.W.2 a valuer tendered his own valuation report Ex.P.4 in relation to the house and puts the value at \$20,000 which P.W.2 says is a conservative estimate based on present day depressed property values.

The defence offered no evidence in reply to the plaintiff's case. Mr. Ramrakha for the defendants submitted that the price of \$8,000 for the property was not absurdly low. He pointed out that there had been no copy of the Crown lease tendered in evidence nor of the mortgage and claimed that the plaintiff's case should be dismissed. He argued that there is no presumption of undue influence in such a relationship.

10

The plaintiff had, with the defendants' consent, put in Ex.P.3, a document prepared and approved by the First National City Bank of Nadi, showing withdrawals amounting to \$6,709.00 from the plaintiff's account, between September 9th 1975 and May 11, 1977.

20

The law appertaining to presumptions of undue influence was considered at considerable length by Ungood-Thomas J. in *In re Graig Deceased* 1970 2 W.L.R., 1219, in which the heirs of the deceased challenged the validity of gifts made by him to his secretary and companion whom he engaged when he was 84 years old on the death of his wife in 1958. In 6 years he gave £28,000 to his said secretary. His Lordship stated at 1221 D that there were two well established classes of undue-influence. The first being where the donee stands in such a fiduciary relation to the donor that a presumption of undue influence arises and prevails unless rebutted by the donee; and secondly where undue influence is established independently of such a presumption. He quoted Lindley L.J. in *Allcard v. Skinner* (1887) 36 Ch.D. 145 at 182 on the principles governing the question of undue influence and said at 1222 -

30

40

"What then is the principle? Is it that it is right to save persons from the consequences of their own folly? or - to save them from being victimised? In my opinion the doctrine of undue influence is founded upon the second of these

50

principles.

"

_____. They (the courts) have not shrunk from setting aside gifts made to persons in a position to exercise undue influence over the donors, although there has been no proof of the actual exercise of such influence; _____. The courts have required proof of its non-exercise, and, failing that proof, have set aside gifts otherwise unimpeachable."

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

10
20
He quoted from Billage v. Southee 1852 9 Hare 534 where the presumption of undue influence arose between doctor and patient and remarked that the court will control transactions between persons standing in a relation of confidence to each other whatever may be the nature of the confidence reposed or the relation of the parties. The principle of saving persons from being victimised by others was therein said to be of universal application and not limited to trustee and cestui que trust, guardian and ward, attorney and client, and doctor and patient which were merely instances of the application of the principle.

30
The relationship of aunt and niece does not in itself raise the presumption but in Griffiths v. Robins 1818 3 Madd. 191 a gift from aunt to niece was set aside. In that case the aunt of 84 years depended on the kindness and assistance of others including the niece and the latter's husband. She was therefore exposed to their influence and the onus was upon them to establish that she made the gift of her own free will.

40
50
Ungoed-Thomas J. observed at p.1224 E that the presumption of undue influence is raised to prevent victimisation by the influence of one mind over another where its proof may be impossible and the courts require proof of the removal of that influence. He said at F that the presumption of undue influence is raised by proving "a gift so substantial (or of such a nature) that it is not reasonably accounted for by ordinary motives and a relationship between donor and donee where the donor's confidence and trust in the donee places the donee in a position to exercise undue influence over the donor."

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

He continued at H.

"But the courts have refused, rightly, in my respectful opinion, to define either undue influence or such relationships and confidence. _____ . Thus both undue influence and those relationships of trust and confidence which raise the presumption are left, unlimited by definition, wide open for identification on the facts and in all the circumstances of each particular case as it arises."

10

The onus of rebutting the presumption is on the donee who must prove that the transaction was completed by the other party after full, free and informed thought about it. (Zameb v. Hyman 1961. 1 W.L.R. 1442 at 1446). This may be done by showing that the plaintiff had independent advice from a source completely removed from the suspected atmosphere and that the nature and effect of the transaction had been fully explained to the plaintiff.

20

The doctrine is not confined to gifts but to any transaction where one party is in a position to exercise undue influence over the other.

It is stated in "Equitable Remedies" by Spry, at p.180,

"In cases of senility, illness or ignorance of financial matters or a relationship of confidence, for example, the same principles are applied as in instances of intoxication. The true equitable position was lucidly stated by Fullager J. in Blomley v. Ryan, (1956) 99 C.L.R. 362 at 405. 'The circumstances adversely affecting a party, which may induce a court of equity either to refuse its aid or to set a transaction aside, are of great variety and can hardly be satisfactorily classified. Among them are poverty or need of any kind, sickness, age, sex infirmity of body or mind, drunkenness, illiteracy or lack of education, lack of assistance or of explanation is necessary. The common characteristic seems to be that they have the effect of placing one party at a serious disadvantage vis a vis the other.'"

30

40

Having referred to the law relating to the

50

presumption of undue influence I will endeavour to see how it affects the instant case.

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

10 I am in a different position from that of some judges who have reviewed the law relating to undue influence. In Re Craig decd. (supra) the donor had passed away and the learned judge required the evidence of witnesses describing the age and senility of the deceased at the time the transactions were entered into. In other cases viz. intoxication the judge saw the aggrieved person when he was sober, and so forth. In the instant case I saw the plaintiff and as I noted in the record at the time she is clearly and obviously senile and dependent and she is uneducated. Her condition at once suggests that she could quite easily be victimised by those whom she trusted and upon whom she relied.

20 Is there anything in the evidence which raises the presumption that the defendant 1 and 2 exercised undue influence upon her in relation to the transactions complained of?

30 It is to my mind most significant that whilst the plaintiff was living in Lautoka with her son P.W.3 and without any evidence to suggest that the plaintiff had been wanting to move, the deft. No.1, her daughter, arrived one day in July 1975, and on that same day persuaded her aged parent (the plaintiff) to go with her and to stay with her. What was the reason for this interest which the deft. No.1 appears to have suddenly taken in her mother? It seems to me that the reason for that interest is revealed from the events which followed.

40 In July 1975 the plaintiff's bank account in Lautoka, with the First National City Bank was closed and transferred to Nadi, closer to the deft. No.1's home. It was in July that the deft. 1 took the plaintiff away from Lautoka and it is apparent that no time was lost in getting the plaintiff's finances brought close to deft. No.1. From then onwards substantial drawings were made upon the plaintiff's Nadi bank account commencing on September 9th 1975 with a sum of \$50.00 but in December and January a total of \$3,200 was withdrawn. In 19 months \$6,709 were withdrawn from the plaintiff's account in Nadi although the Statement of Claim refers to a sum of \$5,459. Why was all that money withdrawn? Surely the plaintiff at her age and living with her daughter could not possibly have needed any of it.

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

I say this because it is not disputed that she owned a house in Lautoka which produced a rent of \$195.00 per month and which at her age would cover her personal requirements. The statement of claim alleges that of the sum of \$5,459 the only amount used for the plaintiff's benefit was about \$220 being Crown Land Rent and Lautoka City rates. Those items could easily have been met from the rent.

The plaintiff is, in my opinion, the last person who would be able to explain why \$6,709 was drawn from her account and for what purpose it was used. The withdrawals are revealed by Ex.P.3 a statement prepared by the bank. The plaintiff would not be able to go to the bank in Nadi unless escorted and physically assisted and there is no doubt that she was not alone when those withdrawals were made.

In May 1977 the deft. No.2 obtained a transfer to himself of the house in Lautoka owned by the plaintiff. The purchase price of \$8,000 is in my view something which in the circumstances arouses one's suspicions. I unhesitatingly accept the evidence of the surveyor P.W.2 that the house and land are worth at least \$20,000. What could have prompted this senile old woman to have parted with a \$20,000 house bringing in a rental income of \$195.00 per month from the absurdly low figure of \$8,000.00? There is nothing to suggest that she was in need of money; in fact her income by way of rent would suffice for her normal needs. There is nothing to suggest that she was in need of capital. Why then should she sell it for such an absurdly low sum? Moreover, she did not receive cash but only \$1000 down payment with the balance secured by way of mortgage. The details of that transaction are not in evidence. Apparently there was no notice to produce them. For a down payment of \$1000 the deft.2 received the right to the house and an income of \$2,360 per annum therefrom which would repay the mortgage in 3 years subject of course to any interest which might be payable on the \$7,000. The defence have not revealed any exiety to place before the court any of the details concerning the mortgage transaction.

The senility of the plaintiff and her relationship as mother and grandmother of defts. 1 & 2 is such as to show that the latter were

10 in a position to victimise her by exercise of
undue influence. I saw the defendants in
Court; the grandson as would be expected is
a very mature man. The details of the money
withdrawn from the plaintiff's account during
her sojourn with the defendants showing the
promptness with which the withdrawals began
once the defendants had the old woman under
their own roof, and the large amount withdrawn
are sufficient, in my view to raise the
presumption that undue influence was in fact
exercised by the defendants. I say large
amount because sums must be relative to the
affluence of the individuals concerned and it
seems to me that \$6,000 is a large sum to
all parties involved in these proceedings.
The plaintiff said, and I believe her and
accept that portion of her evidence as credible,
20 that the deft.1 was always wanting money from
her.

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

30 The nature of the sale of the house on
11/5/77 which also took place whilst the
plaintiff was under their roof is also such in
my opinion as to raise the presumption that the
deft.2, no doubt aided by deft.1, exercised
undue influence over the plaintiff and I have
no doubt that even the \$1,000 deposit did not
come from deft.2 or deft.1 personally. On
11.5.77, the day the \$1,000 was allegedly paid
to the old woman, a sum of \$1,770 was drawn
from her account. It would be strange if the
old woman on the day she received \$1000.00
deposit on the sale of her house should, at
the age of 90 and more years, require a further
\$1,770 from her bank. It is a commonsense
inference that the \$1,000 deposit probably came
out of the \$1,770 withdrawn that same day from
her bank account.

40 Neither of the defendants gave evidence.
No attempt has been made to rebut the presumption
of undue influence which I find arised on the
foregoing transactions.

Unfortunately, although I believe that the
old woman had jewellery in her boxes and that
it disappeared whilst she was staying with the
defendants there is no evidence of what it
amounted to. One could not place any reliance
upon the plaintiff's evidence in that respect.

50 There have been no arguments or submissions
in relation to the prayer for \$2000.00 damages
and I am not satisfied that this should be
awarded.

In the
Supreme Court

No.11
Judgment

30th March
1978

(continued)

There will be judgment for the plaintiff and the defendants are ordered to refund to the plaintiff \$5,459 drawn from her bank account and deft.2 is ordered to deliver up all documents of title relating to the plaintiff's house and land to the plaintiff; and will execute any document which may be necessary to vest the title in her; the mortgage document is rescinded but no order is made for the \$1,000.00 alleged deposit to be refunded to the deft.No.2; the interim injunction of 3/6/77 restraining the defendants or either of them from registering a transfer of the said lease 68339 remains in force. 10

The defendants will pay the plaintiff's costs.

(Sgd.) J.T.Williams
JUDGE

LAUTOKA
30th March, 1978 20

Messrs. Sharma, Singh & Co., for the plaintiff
Messrs. Ramrakhas for the Defendants.

Date of Hearing: 17th February, 1978 &
14th March, 1978.

No.12

ORDER - 30th March
1978

In the
Supreme Court

No.12
Order

30th March
1978

IN THE SUPREME COURT OF FIJI (WESTERN
DIVISION) AT LAUTOKA

CIVIL JURISDICTION

Action No.109 1977

BETWEEN: AMMAI daughter of Nag Reddy
Plaintiff

10

- and -

1. RAJ KUMARI daughter of
Lakhan Singh

2. YENKAIYA NAIDU son of Appana
Defendants

BEFORE THE HONOURABLE MR. JUSTICE WILLIAMS
DATED AND ENTERED THE 30TH DAY OF MARCH, 1978

20 THIS ACTION coming on for trial on the 14th
day of March 1978 before the Honourable Mr.
Justice Williams in the presence of the Counsel
for the plaintiff and defendants AND UPON
READING the pleadings and what was alleged
therein AND UPON HEARING the evidence and what
was alleged therein by the Counsel for the
plaintiff and the defendants THIS COURT DOTH
ORDER as follows :

1. That Judgment be entered for the
plaintiff and the defendants are
ordered to :

30

Refund to the plaintiff \$5459.00
drawn from plaintiff's bank account;

2. That the 2nd defendant deliver up all
documents of title relating to the
plaintiff's house and land to the
plaintiff and execute any document which
may be necessary to vest the title in
the plaintiff and the mortgage document
be and is hereby rescinded.

3. That there be no order for the refund
of \$1000.00 alleged deposit to the
2nd defendant.

40

In the
Supreme Court

No.12
Order

30th March
1978

(continued)

4. That the interim injunction of 3rd of June, 1977 restraining the defendants or either of them from registering a transfer of Lease No. 68339 remain in force.

AND IT IS FURTHER ORDERED that the defendants do pay the plaintiff her costs of this action.

BY THE COURT

(Sgd.) Illegible

DEPUTY REGISTRAR

11.4.78

10

In the Court
of Appeal

No.13
Notice and
Grounds of
Appeal

20th April
1978

No. 13

NOTICE AND GROUNDS OF
APPEAL - 20th April 1978

IN THE FIJI COURT OF APPEAL No. 19 of 1978

On Appeal from the
Supreme Court of Fiji
(Lautoka) in Civil Action
No.109 of 1977

BETWEEN: 1. RAJ KUMARI daughter of
Lakhan Singh
2. YENKAIYA NAIDU son of
Appana

APPELLANTS
(ORIGINAL DEFENDANTS)

A N D: AMMAI daughter of Nag Reddy

RESPONDENT
(ORIGINAL PLAINTIFF)

NOTICE OF APPEAL

TAKE NOTICE that the Fiji Court of Appeal will be moved at the expiration of (14) fourteen days from the service upon you of this Notice, or so soon thereafter as Counsel can be heard, by Counsel for the abovenamed Appellants for an Order that the Judgment given by His Lordship Mr. J.T.Williams be wholly set aside, and an order be made entering judgment in favour of the Appellants with costs.

AND FURTHER TAKE NOTICE that the grounds of appeal on which the Appellants intend to rely are as follows :-

In the Court
of Appeal

No.13
Notice and
Grounds of
Appeal

20th April
1978

(continued)

1. The learned trial Judge erred in law and in fact in holding that there was a presumption of undue influence at the time that the transfer and other documents had been signed.
- 10 2. There was no evidence as to the state of the mind of the plaintiff at the material time, namely when she signed the documents in question, and the learned trial Judge erred in law and in fact in holding that at that particular time she was not in a fit and proper state to sign the said documents, or that she could have been the subject of undue influence.
- 20 3. The plaintiff led no evidence as to the nature of the documents that she had signed, of the person or persons before whom she had signed, and the learned trial Judge erred in presuming that she was not properly or legally advised, as a result whereof there has been a miscarriage of justice.
- 30 4. The learned trial Judge erred in law and in fact in ordering that sums withdrawn by the Plaintiff from her Savings Bank Account must have been used by the Defendants.
5. The learned trial Judge erred in coming to a conclusion on the facts in the middle of the trial, namely in stating that the plaintiff was a person wholly at the mercy of her relatives, and would lean on whosoever was with her at the material time.
- 40 6. Alternatively, the Appellants complain that by reason of the said remarks, the Appellants were misled into not leading any evidence at the trial, and there ought to be a retrial.
7. The learned trial Judge came to a premature conclusion of law and fact in the middle of the hearing, and thereby there was a miscarriage of Justice.

DATED this 20th day of April, 1978

In the Court
of Appeal

No.13
Notice and
Grounds of
Appeal

20th April
1978

(continued)

R A M R A K H A S

Per: (Sgd) K.C.Ramrakha

To the abovenamed Respondent and/or his
Solicitors Messrs. Sharma, Singh & Co.
Solicitors, Lautoka

In the
Supreme Court

No.14
Order making
Subarmani a
party to the
Action

3rd November
1978

No. 14

ORDER MAKING SUBARMANI
A PARTY TO THE ACTION
3rd November 1978

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION) 10
AT LAUTOKA

DISTRICT REGISTRY

No. 109 of 1977

Between: AMMAI (daughter of Nag Reddy)
of Simla, Lautoka, Widow Plaintiff

And: RAJ KUMARI (daughter of
Lakhan Singh) of Lomawai,
Nadroga, Married Woman 1st Defendant

And: YENKAIYA NAIDU (son of
Appanna) of Lomawai, 20
Nadroga, Farmer 2nd Defendant

BEFORE THE HONOURABLE MR. JUSTICE WILLIAMS
(IN CHAMBERS) FRIDAY THE 3RD DAY OF NOVEMBER,
1978

UPON A MOTION in this action under Order 15
Rule 7 of the Rules of Supreme Court by Counsel
for the plaintiff;

AND UPON READING the affidavit of JAY RAJ SINGH
filed herein;

IT IS ORDERED that the plaintiff's son SUBARMANI 30
(son of Ponsami) be made a party to this action
to represent the plaintiff herein who died on
the 24th day of September, 1978.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

In the Supreme Court

BY THE COURT

(Sgd.) Illegible

DEPUTY REGISTRAR

6.11.78

No.14
Order making
Subarmani
a party to
the Action

3rd November
1978

(continued)

No. 15

JUDGMENT OF GOULD, V.P.
30th November 1978

In the Court
of Appeal

No.15
Judgment of
Gould, V.P.

30th November
1978

10 IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction

Civil Appeal No. 19 of 1978

Between:

- 1. RAJ KUMARI d/o Lakhan Singh
- 2. YENKAIYA NAIDU s/o Appana

Appellants

- and -

AMMAI d/o Nag Reddy Respondent

20 A. Singh for the Appellants
D.S.Sharma for the Respondent

Date of Hearing: 17th November, 1978
Delivery of Judgment: 30/11/78

JUDGMENT OF GOULD, V.P.

I have had the advantage of reading the judgments of Marsack J.A. and Spring J.A. in this appeal and fully agree with their reasoning and conclusions.

All members of the court being of the same opinion the appeal is dismissed with costs.

30

.....
VICE PRESIDENT

In the Court
of Appeal

No.16
Judgment of
Marsack, J.A.

30th November
1978

No. 16

JUDGMENT OF MARSACK, J.A.
30th November 1978

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

CIVIL APPEAL NO. 19 OF 1978

Between:

- 1) RAJ KUMARI(d/o Lakham Singh)
- 2) YENKAIYA NAIDU (s/o Appana)

Appellants

10

- and -

AMMAI (d/o Nag Reddy) Respondent

A. Singh for the Appellants
D.S.Sharma for the Respondent

Date of Hearing: 17th November, 1978
Delivery of Judgment: 30/11/78

JUDGMENT OF MARSACK, J.A.

This is an appeal against a judgment of the Supreme Court at Lautoka delivered on the 30th March, 1978 ordering :

20

- (a) That appellants refund to the respondent the sum of \$5459 drawn from the respondent's bank account;
- (b) that the second appellant deliver up all documents of title relating to a certain house property and to execute any documents necessary to vest that title in the respondent;
- (c) that an interim injunction of the 3rd June 1977 restraining the appellants or either of them from registering a transfer of lease No. 68339, remain in force.

30

Subsequently to the commencement of the proceedings the respondent died, on the 24th September, 1978. An order was made by the Supreme Court at Lautoka appointing her son Subramani Ponsami as the representative of

the respondent in the present appeal, and the case proceeded on that basis, counsel for the respondent acting for Subramani.

In the Court
of Appeal

No.16
Judgment of
Marsak, J.A.
30th November
1978
(continued)

10 The relevant facts may be shortly stated. At material times the respondent was an old lady of approximately 90 years of age; the first appellant is her daughter and the second appellant her grandson. Until the month of July, 1975, the respondent had been living for some years with a son, Subramani Ponsami, at Simla, Lautoka. On one day in July 1975, the first appellant arrived at Subramani's home in Lautoka and persuaded the respondent to go and stay with her on her property at Lomawai. The respondent remained there until May 1977 when she returned to live with her son Subramani at Lautoka. At the time in July, 1975 the respondent owned a Crown leasehold house property in Waiyavi, Lautoka under lease No. 68339. This house property produced a rent of \$195 per month which was paid to the respondent. She also had moneys on deposit with a Savings Bank (First National City Bank) and took her Savings Bank book No. 002289 with her to Lomawai. She also took two wooden cases containing clothing, jewellery and other personal effects.

20 While at Lomawai she made withdrawals from her Savings Bank account of the following amounts on the dates set out :-

30	<u>Date</u>	<u>Amount</u>
	Sept/9/75	\$ 50.00
	Dec/18/75	\$1,000.00
	Dec/18/75	\$1,000.00
	Jan/21/75	\$1,200.00
	March/23/77	\$ 700.00
	April/29/76	\$ 330.00
	Nov/3/76	\$ 89.00
	March/8/77	\$ 570.00
40	May/11/77	\$ 570.00
	May/11/77	<u>\$1,200.00</u>
		<u>\$6,709.00</u>

50 She also, on the 11th May, 1977, executed in favour of the second appellant a transfer of her leasehold house property for the sum of \$8,000, of which \$1,000 was paid in cash and the balance was secured by mortgage. As respondent was illiterate, she had to execute the transfer by placing her thumb-print on the document. A valuation of the leasehold property was made on the 4th March, 1978 by a professional valuer.

In the Court
of Appeal

No.16
Judgment of
Marsack, J.A.

30th November
1978

(continued)

This was stated to be a conservative valuation, and amounted to \$19,893. When she returned to her son Subramani, there was no jewellery in the boxes.

The respondent took action in the Supreme Court at Lautoka against the appellants claiming the refund of all moneys which she alleged had been taken from her, a re-transfer of the leasehold house property and the return of the jewellery or, in default, its value. The learned trial judge held that there was no proof that the appellants had taken the jewellery, but gave the judgment already quoted for the return of certain moneys and a re-transfer of the house property.

10

In connection with the purported sale of the house property, it is significant that on the very day that a thousand dollars was said to have been paid to her in cash, the respondent had drawn two sums totalling \$1,770 from the Savings Bank, which amount, she stated, was paid to her daughter who was asking for money.

20

The basis of respondent's claim in the Supreme Court against the appellants was an allegation of fraud on the part of the appellants, and also that the appellants had exercised undue influence on the old lady, whose mental and physical condition made it impossible for her to withstand that influence. The respondent was called to give evidence in the Supreme Court. After she had been cross-examined for some time, counsel for the appellants said :-

30

"In view of the witness's mental state I do not propose to try and question her further."

At this stage the learned trial judge commented on the physical and mental condition of the respondent and informed counsel of his views. The record made by the learned trial judge is in these words :-

40

"This witness is obviously very old and very feeble-minded. She is chattering constantly and whispering. She is certainly very dependant and whatever may be needed to support her case will largely depend on 3rd parties. It is obvious that she will be virtually at the mercy of any relative or person with whom she resides

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or who is looking after her.

I have communicated the above comments to the advocates."

In the Court
of Appeal

No.16
Judgment of
Marsack, J.A.

30th November
1978

(continued)

10 Later in the course of his judgment the learned trial judge noted that he was in a different position from that of some judges who had reviewed the law relating to undue influence. Those judges had had to rely on evidence of witnesses describing the age and senility of the person concerned at the time the transactions were entered into. He went on to say :-

"In the instant case I saw the plaintiff and as I noted in the record at the time she is clearly and obviously senile and dependant and she is uneducated. Her condition at once suggests that she could quite easily be victimised by those whom she trusted and upon whom she relied."

20 Counsel for the appellants contended that observations of the judge on the 17th February, 1978 could not definitely establish the mental and physical condition of the respondent some nine months previously, on the 11th May, 1977, when the transfer of the lease was executed. Considering all the circumstances of the case and the evidence generally as to the old lady's behaviour, I am satisfied that apart from the statement of the learned trial judge that she
30 had been ill, there is no evidence of any such supervening illness or other cause of mental or bodily change, as would be liable to effect any significant change to a woman of her age occurring in the period of nine months. Therefore in my view the learned judge was thoroughly justified in coming to the conclusion which he did, with regard to her susceptibility to victimisation by those whom she trusted.

40 The presumption of undue influence by the appellants on the respondent in this case, must necessarily arise in the circumstances which are set out in detail in the learned judge's judgment. During the term of her stay with the appellants the old lady was not only weak mentally but she was unable to leave the premises of her own motion. Her house property produced a rental of \$195 a month, which, as the learned judge pointed out, would cover her personal requirements. In ample measure, in my
50 opinion. Yet in the space of some 20 months, she drew a sum of \$6709 from her deposits in

In the Court
of Appeal

No.16
Judgment of
Marsack, J.A.
30th November
1978

(continued)

the Savings Bank. In this respect there is
a definite finding by the learned trial judge:-

"The plaintiff said, and I believe her
and accept that portion of her evidence
as credible, that the deft.1 (first
appellant) was always wanting money from
her."

He further found that even the \$1,000 deposit
which the appellants alleged was paid to the
respondent on the purported purchase of the
house property did not come from either of the
appellants personally. As has been pointed
out, on the very day that the \$1,000 was
allegedly paid to the old woman, a sum of
\$1,770 was drawn from her bank account. As
the trial judge said :-

10

"It would be strange if the old woman on
the day she received \$1,000 deposit on the
sale of her house should, at the age of
90 or more years, require a further
\$1,770 from her bank. It is a common-
sense inference that the \$1,000 deposit
probably came out of the \$1,770 withdrawn
that same day from her bank account."

20

All these factors raise a strong presumption
that undue influence was exercised by her
daughter and son-in-law to induce the old lady
to withdraw considerable sums of money from her
bank account and to execute in favour of the
second appellant a transfer of her income-
yielding property for but a fraction of its
true value.

30

The general principle which is affirmed
in the authorities quoted to the Court is that
there must exist a "relation of confidence"
between the parties. Such a relation may arise,
for example, as between doctor and patient and
between members of a family. The circumstances
established by the evidence in this case clearly
show, not only a family relationship, but also
a situation which the infirmities of the old
lady were such that her dependence on the
appellants in practically all matters, including
those financial, was inevitable during her
stay with them. That being so, the presumption
of undue influence would necessarily arise.

40

Leading authorities on the legal aspects
of the questions in issue in this present case
were fully considered by the learned trial
judge in his judgment and I do not find it

50

necessary to repeat them here.

In the Court
of Appeal

Once the presumption of undue influence arises, the onus is then cast on the party presumed to have exercised such influence, to satisfy the Court that the transaction in issue was not brought about by undue influence on his part. As is said by Cotton L.J. in Allcard v. Skinner 36 Ch.D. 145 at p.171:

No.16
Judgment of
Marsack, J.A.
30th November
1978

(continued)

10 "These decisions may be divided into two
classes: first where the Court has been
satisfied that the gift was the result of
influence expressly used by the donee for
the purpose; secondly, where the relations
between the donor and donee have at or
shortly before the execution of the gift
been such as to raise a presumption that
the donee had influence over the donor.
20 In such a case the Court sets aside the
voluntary gift, unless it is proved that
in fact the gift was the spontaneous act
of the donor acting under circumstances
which enabled him to exercise an independ-
ent will and which justify the Court in
holding that the gift was the result of a
free exercise of the donor's will."

This statement of the law was quoted with
approval by Lord Hailsham L.C. in Inche Noriah
v. Shaik Allie Bin Omar (P.C.) 1929 A.C.127 at
30 p.132, and by Jenkins L.J. in Tufton v. Sporni
(1952) 2 T.L.R. 516 at p.527. The onus of
supplying the proof the law requires lies on
the party benefited: Zamet v. Hyman (1961) 1
W.L.R. 1442 at p.1446.

40 In the present case the learned trial
judge found, on what were in my opinion
thoroughly substantial grounds, that he was
entitled to infer that the moneys drawn from
the respondent's Savings Bank account were,
in the absence of adequate explanation, used
largely for the benefit of the appellants. He
also found that presumption of undue influence
arose with regard both to the Savings Bank
transactions and to the transfer of the respon-
dent's house property to the second appellant at
a gross under-value. Therefore, in accordance
with the principles laid down in the authorities
quoted, the onus lay on the appellants to rebut
that presumption. No attempt was made by the
appellants to do so. They called no evidence.
50 In the result, the presumption of undue
influence, for which in my opinion there were
substantial grounds, was not rebutted. The Court

In the Court
of Appeal

No.16
Judgment of
Marsack, J.A.

30th November
1978

(continued)

then is under a duty to set aside the transactions effected by the undue influence and to restore the respondent, as far as possible, into the position she would have been in if that undue influence had not been exercised.

In the result I am firmly of the opinion that the judgment of the learned trial judge was correct. I would therefore dismiss the appeal and order the appellants to pay the respondent's costs.

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.....
JUDGE OF APPEAL

Suva,
Nov'78

No.17
Judgment of
Spring, J.A.
30th November
1978

No. 17

JUDGMENT OF SPRING, J.A.
30th November, 1978

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 19 of 1978

20

Between: 1. RAJ KUMARI d/o Lakhan Singh
2. YENKAIYA NAIDU s/o Appana

Appellants

- and -

AMMAI d/o Nag Reddy

Respondent

Mr. A. Singh for the Appellants
Mr. D.S.Sharma for the Respondent.

Date of Hearing: 17th November 1978
Delivery of Judgment: 30.11.78

JUDGMENT OF SPRING, J.A.

30

Judgment was given in the Supreme Court at Lautoka in favour of the abovenamed respondent Ammai ordering the abovenamed appellants Raj Kumari and Yenkaiya Naidu (1) to refund to the

respondent the sum of \$5459 withdrawn from the respondent's bank account (2) the second appellant Yenkaiya Naidu to deliver up all documents of title relating to the respondent's house property and to hand same to the respondent and (3) the second named appellant to execute any documents which may be necessary to vest the title to the house property in the respondent. The appellants now appeal to this Court against the above judgment.

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.
30th November
1978
(continued)

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20

The facts may be briefly stated. The respondent at the time of the hearing in the Supreme Court was aged 90 years or more; she was illiterate. In July 1975 she left the home of her son Subramani Ponsami at Lautoka and went to stay with her daughter the 1st appellant Raj Kumari and her grandson the 2nd appellant Yenkaiya Naidu at Lomawai Nadroga; we are informed that it is a remote cane growing area; the homesteads are scattered over a wide area and are not close together; there is no settlement or township. The appellant's house is 2 miles from the main road.

30

40

50

The respondent took with her in July 1975 the title to a house property owned by her in Lautoka; 2 wooden cases containing clothing, jewellery and other person effects and a Savings Bank Book No. 002289 with the First National City Bank at Lautoka. Shortly after arriving at her daughter's residence the respondent's account with the First National City Bank at Lautoka was closed and a savings account opened in the respondent's name at the First National City Bank at Nadi which was closer to the appellants' residence. In 19 months while the respondent was living with the appellants \$6709 was withdrawn from her savings account at Nadi; the Statement of Claim, however, refers to a sum of \$5459 only. The house property owned by the respondent valued by a professional valuer at \$19,893 was transferred in May 1977 to the 2nd appellant Yenkaiya Naidu for \$8000 - a grandson of the respondent whom the learned trial Judge described as a "very mature man"; the terms of sale being \$1000 deposit and \$7000 secured on mortgage. The house was currently let at \$195 a month. After 22 months the respondent left the home of the appellants and returned to live with her son Subramani. It was found on her return to her son's residence that all her jewellery had disappeared.

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.
30th November
1978
(continued)

The respondent brought an action against the appellants alleging fraud on the part of the appellants and also claiming that the appellants had exerted undue influence upon her while she was in their care. It was alleged that the appellants had taken advantage of her advanced years and impaired mental and physical condition and prevailed upon her to sell her house property to the 2nd appellant for \$8000; and to withdraw not less than \$5459 from her savings account which the appellants retained. The respondent claimed also the return of the jewellery which she alleged the appellants had taken. The learned Judge in the Court below made the orders above mentioned but refused to make any order in respect of the jewellery as there was insufficient evidence from the respondent as to its nature or value. A claim of \$2000 for damages was not pursued at the hearing and no award was made under this head. We were informed at the Bar that the respondent died on the 24th September 1978 and that an order was made by the Supreme Court at Lautoka appointing the son Subramani Ponsami as the representative of the respondent. The appeal proceeded on this basis.

The appellants appealed to this Court and their grounds of appeal overlapped to a great extent; they may be summarised as follows -

- (1) That the learned trial Judge erred in law and in fact in holding that there was a presumption of undue influence when the documents transferring the house property were signed and further that he erred in presuming that at such time the respondent did not receive proper independent legal advice;
- (2) That the learned trial Judge came to a premature conclusion during the trial as to the respondent's mental condition and erred in law and in fact in concluding that the moneys withdrawn from the respondent's savings bank account must have been used by the defendants.

Mr. Singh submitted that the mere blood relationships of mother and daughter, and grandmother and grandson did not of themselves

give rise to the presumption of undue influence. That in the instant case before the presumption of undue influence necessarily arose evidence must be adduced to show that there was a relation of confidence between the appellants and the respondent to such an extent that the appellants exercised dominion over the respondent.

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.
30th November
1978

(continued)

10 Counsel for the appellants submitted that there was insufficient evidence to justify the learned trial Judge concluding that a close and confidential relationship existed between the parties and further that no presumption of undue influence arose. The learned trial Judge has in my view, with respect, correctly set forth in his judgment the legal principles that are in issue.

Lord Chelmsford L.C. said in Tate v. Williamson 2 Ch.App. 55 at 60 -

20 "The jurisdiction exercised by Courts of equity over the dealings of persons standing in certain fiduciary relations has always been regarded as one of most salutary description. The principles applicable to the more familiar relations of this character have been long settled by many well-known decisions but the Courts have always been careful not to fetter
30 this useful jurisdiction by defining the exact limits of its exercise. Wherever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is possessed by the other, and this confidence is abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing
40 himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no such confidential relation had existed."

Where the presumption of undue influence arises as a result of a close and confidential relationship which is shown to exist between the parties it is incumbent upon the party presumed to have exercised such undue influence to support the validity of the transaction beneficial to him.
50 The principle is to be found in the judgment of Lord Hailsham L.C. in Inche Noriah v. Shaik Allie

In the Court
of Appeal

No.17
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Spring, J.A.
30th November
1978
(continued)

Bin Omar /1929/ A.C. 127. It may be stated as follows - Where the relations between the donor and donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor, the court will set aside the voluntary gift unless it is proved that in fact the gift was the spontaneous act of the donor acting in circumstances which enabled the donor to exercise an independent will and which justifies the court in holding that the gift was the result of a free exercise of the donor's will. 10

Dealing with the first ground of appeal. Mr. Singh submitted that there was no evidence that at the date of the transfer of the house property was signed - 11th May 1977 - the respondent was under the influence or dominion of the appellants and as a consequence she signed over her property at Lautoka to the 2nd appellant for the mere sum of \$8000. 20

In the Supreme Court the respondent stated in evidence -

"I did not sell my house to Yenkaiya (defendant No.2) they cheated me. I have not received a single penny for the house.

When I was sick and having a bath someone took the lease from my box and my belongings. The box was opened with a key.

The lease shows it was transferred to Yenkaiya Naidu (defendant No.2). I never wanted to sell it to anybody. They forcibly got me to fix my thumb print; I was yelling; I was crying. There was only one lawyer. 30

(N.B. Demonstrates how daughter picked her from rear and son of daughter pressed her thumb)"

In the appellants Amended Statement of Defence it is pleaded in paragraph 6 thereof -

"The defendants in answer to paragraph 9 of the Statement of Claim admit the plaintiff executed a Memorandum of Transfer as stated therein, and that the said transfer was approved by the Director of Lands. Save as herein admitted the defendants deny that they exercised any undue influence on the plaintiff, or were guilty of fraud. They say that the plaintiff 40

was independently advised, and made the transfer freely and voluntarily, and that Messrs. B.K.Pillay & Co. Solicitors of Nadi acted for both parties. "

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.
30th November
1978
(continued)

In cross-examination the respondent said -

"Q. Can you recall the occasion when you went to the lawyer's office about the lease?

10 A. My daughter got hold of my hand. The clerk got me to put my thumb print on two documents.

Q. You wanted Yenkaiya (your grandson) to have the land?

A. No.

Q. Mr. B.K.Pillai explained the transaction to you?

A. He was not there.

Q. After he spoke to you you applied your thumb print?

20 A. They forced me to do it. I was crying."

Param Anan Singh, a professional valuer of 43 years experience testified that the house including the value of the lease was worth \$19,893. In this case the learned trial Judge saw the respondent and heard her evidence, admittedly, some 9 months after the transfer of the house property was signed. Apart from the above quoted statement of the respondent when she said "When I was sick" there was no
30 evidence of any illness or deterioration in her mental or physical condition between the date the transfer was signed and the date upon which she gave evidence in the Supreme Court. The learned trial Judge said -

40 "I am in a different position from that of some judges who have reviewed the law relating to undue influence..... in the instant case I saw the plaintiff and as I noted in the record at the time she is clearly and obviously senile and dependent and she is uneducated. Her condition at once suggests that she could quite easily be victimised by those whom she trusted and upon whom she relied."

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.

30th November
1978

(continued)

The task of the court in deciding whether there is a free exercise of will by the transferor is obviously made easier when the parties are seen and heard as witnesses. The Privy Council in Williams v. Williams [1937] 4 All E.R. 34 at page 38 stated -

"There is, however, one matter which in their Lordships' opinion is of very great importance and which distinguishes this case from other cases in which a question, similar to that now under consideration, has arisen. In many of such cases the question came up for consideration after the donor was dead. In this case, however, both the donor and the donee, the plaintiff and the defendant, were available as witnesses and gave evidence at the trial. Webber, C.J., therefore had the great advantage of seeing both parties in the witness-box, and of hearing their evidence." 10 20

The learned Judge then had regard to the nature of the sale of the house property when he said -

"The nature of the sale of the house on 11.5.77 which also took place whilst the plaintiff was under their roof is also such in my opinion as to raise the presumption that the deft.2, no doubt aided by deft.1, exercised undue influence over the plaintiff and I have no doubt that even the \$1000 deposit did not come from deft.2 or deft.1 personally. On 11.5.77, the day the \$1,000 was allegedly paid to the old woman, a sum of \$1,770 was drawn from her account. " 30

No evidence was called by the appellants; the solicitor whom the appellants alleged in the pleadings gave independent legal advice was not called. It is to be noted however that in the appellants' Statement of Defence it was stated that the solicitor acted for both parties. 40

The learned trial Judge said -

"For a down payment of \$1000 the deft.2 received the right to the house and an income of \$2,360 per annum therefrom which would repay the mortgage in 3 years subject of course to any interest which might be payable on the \$7,000. The defence have not revealed any anxiety to place before 50

the Court any of the details concerning the mortgage transaction.

In the Court
of Appeal

The senility of the plaintiff and her relationship as mother and grandmother of defts. 1 & 2 is such as to show that the latter were in a position to victimise her by exercise of undue influence. I saw the defendants in Court; "

No.17
Judgment of
Spring, J.A.
30th November
1978
(continued)

10 In my view therefore there was ample evidence before the learned Judge in particular having regard to all the surrounding circumstances for him to conclude that the presumption of undue influence arose in respect of the transfer of the house property to the second appellant. Accordingly this ground of appeal fails.

20 Turning now to the second ground of appeal. The respondent stated that she had not visited her daughter before the first appellant called in July 1975 to take her to Lomawai. The learned trial Judge commented upon the suddenness of the decision to remove the old lady from her son's residence at Lautoka to the 1st appellant's residence at Lomawai when he said -

30 "It is to my mind most significant that whilst the plaintiff was living in Lautoka with her son P.W.3 and without any evidence to suggest that the plaintiff had been wanting to move, the deft. No.1, her daughter, arrived one day in July 1975, and on that same day persuaded her aged parent (the plaintiff) to go with her and to stay with her. What was the reason for this interest which the deft. No.1 appears to have suddenly taken in her mother?"

The circumstances surrounding the inviting of the respondent to go to Lomawai are somewhat suspicious and unusual. The son Subramani Ponsami said in evidence -

"On 17th July 1975 she went to Lomawai.

40 1st Defendant came to my neighbour. I saw her. A boy came to my house. He spoke to my mother - plaintiff. My mother went to the neighbour's. She told me she would be away for an hour.

My sister - 1st defendant - did not come to my place.

My mother returned and said she was going

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.
30th November
1978

(continued)

to 1st defendant's house for a week. "

In July 1975 shortly after the respondent went to her daughter's home the respondent's savings bank account was transferred from the Lautoka branch to the Nadi branch of the First National City Bank. The respondent said -

"I had about \$10,000.00 to \$14,000.00 in the bank. It was withdrawn. I do not know how it came to be used.

My Nadi, City Bank Savings Account is marked closed. I see my savings book. I am now told it is marked closed." 10

The learned trial Judge stated in his judgment -

"The plaintiff would not be able to go to the bank in Nadi unless escorted and physically assisted and there is no doubt that she was not alone when those withdrawals were made. "

In 19 months from July 1975 some \$6709 was withdrawn from the respondent's savings bank account and it is apparent that the respondent would not have need of such a large sum of money; she was living with her daughter in a remote cane growing area, unable to get about on her own and dependent upon the appellants. 20

In their Amended Statement of Defence the appellants admit that the moneys were withdrawn from the respondent's savings bank account but aver that they were withdrawn for the benefit of and on account of the respondent. 30

In her evidence the respondent said "My daughter was asking for money."

The learned trial Judge found as follows :-

"The details of the money withdrawn from the plaintiff's account during her sojourn with the defendants showing the promptness with which the withdrawals began once the defendants had the old woman under their own roof, and the large amount withdrawn are sufficient, in my view to raise the presumption that undue influence was in fact exercised by the defendants. I say large amount because sums must be relative to the affluence of the individuals concerned and it seems to me 40

that \$6,000 is a large sum to all parties involved in these proceedings. The plaintiff said, and I believe her and accept that portion of her evidence as credible, that the deft.1 was always wanting money from her. "

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.

30th November
1978

(continued)

10 The learned trial Judge then considered the proposition that the moneys withdrawn from the bank account of the respondent had been used for her benefit and he said -

20 "In 19 months \$6,709 were withdrawn from the plaintiff's account in Nadi although the Statement of Claim refers to a sum of \$5,459. Why was all that money withdrawn? Surely the plaintiff at her age and living with her daughter could not possibly have needed any of it. I say this because it is not disputed that she owned a house in Lautoka which produced a rent of \$195.00 per month and which at her age would cover her personal requirements. The statement of claim alleges that of the sum of \$5459 the only amount used for the plaintiff's benefit was about \$220 being Crown Land Rent and Lautoka City rates. Those items could easily have been met from the rent.

30 The plaintiff is, in my opinion, the last person who would be able to explain why \$6,709 was drawn from her account and for what purpose it was used. "

40 The learned Judge drew the inference and with respect correctly, in my view, that the moneys withdrawn from the respondent's bank accounts were used by the appellants. The learned trial Judge found that the presumption of undue influence by the appellants arose in respect of the withdrawals from the bank and that it was for the appellants to support that the withdrawals from the bank account were genuinely made by the respondent and were the exercise of her own free will and rebut the presumption of undue influence which necessarily arose on account of the manifestly close and confidential relationship between the appellants and the respondent.

50 The appellants elected to call no evidence. Accordingly, the presumption of undue influence which the learned trial Judge held existed in respect of the withdrawals from the respondent's savings bank account remained unassailed. In my view this ground of appeal also fails.

In the Court
of Appeal

No.17
Judgment of
Spring, J.A.
30th November
1978

(continued)

For the reasons which I have given I am of the opinion that this appeal should be dismissed and that the orders made the learned trial Judge should stand. Accordingly I would dismiss the appeal and order the appellants to pay the costs of Subramani Ponsami the representative of the respondent now deceased.

.....
JUDGE OF APPEAL

SUVA,

10

November, 1978

No.18
Order granting
Conditional
Leave to
Appeal to Her
Majesty in
Council

26th January
1979

No. 18
ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL - 26th
January 1979

IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Civil Appeal No.19 of 1978

BETWEEN: 1. RAJ KUMARI d/o Lakhan Singh 20
2. YENKAIYA NAIDU s/o Appana

AND : AMMAI d/o Nag Reddy APPELLANTS
RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE C.C.MARSACK
FRIDAY THE 26TH DAY OF JANUARY, 1979

UPON READING the Notice of Motion for Leave to Appeal to Her Majesty in Council herein dated the 13th day of December, 1978

AND UPON HEARING MR. KARAM CHAND RAMRAKHA of Counsel for the Appellants, the respondent not having appeared 30

IT IS THIS DAY ORDERED that the Appellants do have leave to Appeal to Her Majesty in Council from the Judgment of the Fiji Court of Appeal

given on the 30th day of November, 1978 under the provisions of the Fiji (Procedure in Appeal to Privy Council) Order 1970 and that in the meantime all execution and proceedings be stayed herein on the following terms :

In the Court
of Appeal

No.18

Order granting
Conditional
Leave to Appeal
to Her Majesty
in Council

26th January
1979

(continued)

- 10
- (a) Appeal to be prosecuted with all due diligence;
- (b) Stay of execution to be operative until date of determination of appeal, with leave to respondent to apply at any time after six months from this date for revocation of stay on the ground of undue delay in prosecution of the appeal;
- (c) Appellants to grant no new tenancies of the property or any part thereof without leave of the Chief Registrar;
- 20
- (d) If and when the missing instrument of title is found it is to be lodged with the Chief Registrar within 21 days of finding;
- (e) Appellants to lodge with the Chief Registrar within 21 days the sum of \$500.00 as security for costs;
- (f) The costs of this application to be costs in the cause.

BY ORDER

Sgd. Illegible

REGISTRAR

EXHIBITS

P.3
Withdrawals,
31st July
1975 to 11th
May 1977

EXHIBITS

P.3
WITHDRAWALS, 31ST JULY 1975
to 11TH MAY 1977

AMAI REDDY F/N NAG REDDY
S/A No. 001114

Details of withdrawals made from July 31, 1975
to May 11, 1977

<u>Date</u>	<u>Amount</u>	
Sept/9/75	\$ 50.00	10
Dec/18/75	\$1,000.00	
Dec/18/75	\$1,000.00	
Jan/21/75 (sic)	\$1,200.00	
March/23/77	\$ 700.00	
April/29/76	\$ 330.00	
Nov/3/76	\$ 89.00	
March/8/77	\$ 570.00	
May/11/77	\$ 570.00	
May/11/77	\$1,200.00	
	<u>\$6,709.00</u>	20

EXHIBITS

P.4

CERTIFICATE OF VALUATION
4th March 1978

EXHIBITS

P.4

Certificate
of Value

4th March
1978

PARM ANAND SINGH C.F.V.A.
Auctioneer, Valuer
& Real Estate Agent
(Councillor of Fiji Valuers
Association)

10 Government Auctioneer

Telephone

Residence 61414

P.O.Box 432

LAUTOKA, FIJI 4th March 1978

Messrs. Sharma, Singh & Co.,
Barristers & Solicitors,
Lautoka.

Dear Sirs,

20

THIS IS A CERTIFICATE OF VALUATION
of the property of AMMAI of Waiyavi,
City of Lautoka, Fiji, Widow.

The property is Crown Lease No.68339 Lot 16
Section 43 for a term of 39 years 9 months and
29 days from 1st of March 1958 at yearly rental
of \$25 containing 24.9 perches and known as
"Dravuni & Waiyavi" and situated in Waiyavi in
well known residential area of Lautoka City.

30

A modern concrete house was constructed thereon
in 1960 containing 5 bedrooms, lounge, back
varandah, kitchen, bathroom, w.c. and measuring
1387½ sq.feet all under one roof.

It is constructed of best materials of concrete
as outer walls, the interior works is Damanu
flooring, kauri lining, windows of galvanised
frames, partitions of timber with passage running
in between and hot and cold water laid on.

The structure is mounted on concrete piles 4'
from ground to floor.

40

In 1972 after hurricane BEBE the whole of the
building was renovated and at cost of \$3,000. I
find that the whole of the premises is in fair
condition.

The property is situated in Wayavi residential
area on the Dravuni road being about half a mile

EXHIBITS

P.4
Certificate
of Value
4th March
1978
(continued)

from Drasa Avenue and and few minutes from there into the City of Lautoka.

There is bus stop at the door, public school, public light, tar sealed road and modern amenities. I value the property as follows :

SUMMARY

Porch	5 x 8 = 40 sq.ft.	@ \$8	\$ 320	
Back Varandah	351 sq.ft.	"	\$2808	
Main house	1036½ sq.ft.	@ \$12	<u>\$12438</u>	
			\$15566	10
Electricity			200	
Rotary Dryer			87	
Gas stove			<u>150</u>	
			\$16003	
Less depreciation 1972-78	6%		<u>\$ 960</u>	
			\$15043	
Value of Lease	68339		<u>4850</u>	
		Total	\$19893	

I hereby certify and declare that the total value of the above property is not less than the said amount of \$19893 as above. 20

Dated at Lautoka this 4th day of March 1978

Government Auctioneer & Valuer
Sgd. P. Anand Singh

Rent receipt \$190 per month
Payments Rent \$25. Rates \$98.60

IN THE SUPREME COURT OF THE STATE OF GUJARAT
AT RAIPUR

REVENUE DEPARTMENT
No. 109 of 1977

DECEASED: ANJAL (daughter of Shri Kaddy) of Sialis,
Lautaha, Mewar.

Plaintiff

AND : BILKISHI (daughter of Lakhon Singh) of
Lansal, Mewar, Married Woman.

1st Defendant

AND : NAGESH KUMAR (son of Apparna) of Lansal,
Mewar, Mewar.

2nd Defendant

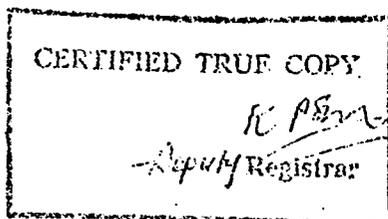
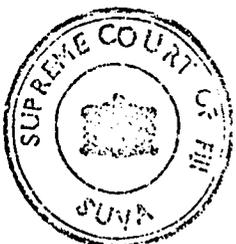
ALL all parties concerned attend before a Judge in Chambers
at Supreme Court, on 3rd day of February 1978 at 9.30
o'clock in the fore noon on the hearing of an application on
the part of the plaintiff that her evidence be taken by this
Honourable Court before the trial proper on the grounds stated in
her affidavit and filed herein.

This application is made pursuant to order 39 rule 1.

DATED this 31st day of January 1978.

This summons was taken out by Messrs. Sharma, Singh & Co. of Lautaha
Solicitors for the plaintiff whose address for service is at the
Chambers of the said Solicitors at Nade Street, Lautaha.

To: The abovesaid defendants and/or their Solicitors, Messrs. Nagesh
Solicitors, Dava and/or their City Agents Messrs. S.B. Patel & Co.
Solicitors, Lautaha.



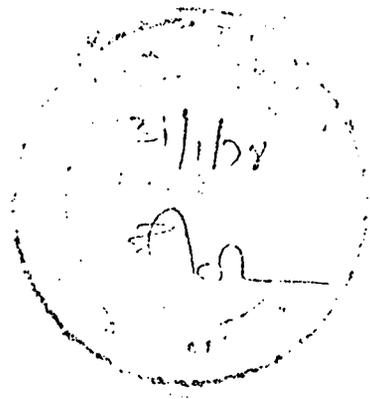
THE QUALIFIED AGENTS (REGISTRATION)
ACT, 1977

REGISTRATION NO. 109 OF 1977

REGISTERED AGENT: JAGDISH K. JAIN
AND: JAGDISH K. JAIN
AND: SHEKHAR K. JAIN

REGISTRATION NO. 109 OF 1977

31-7-77



REGISTRATION NO. 109 OF 1977

CHAND, 10000 0000
SALADHAR,
MADRAS.

IN THE SUPREME COURT OF INDIA (ORDINARY ORIGINAL JURISDICTION)
MADRAS

WARRANT FOR DEPOSIT
NO. 109 of 1978

DEVIKANTA AMMAI (daughter of Nag Reddy) of Simla,
Madrach, Widow.

Plaintiff

AND : RAMKRISHNA (daughter of Lakshmi Singh) of
Madrach, Madras, Married Woman.

1st Defendant

AND : YERRAIA KANDI (son of Appanna) of
Madrach, Madras, Farmer.

2nd Defendant

1. I am the plaintiff in the above action.
2. I am more than 90 years old.
3. That my health is rapidly deteriorating and recently I have been very ill.
4. That I am informed by my Solicitors that 14th March, 1978 has been assigned as the tentative hearing date in the above action.
5. That I fear on the said date or any date thereafter, due to my age and failing health, I would not be in a position to give evidence as best as I can now.
6. I humbly request the Honorable Court to allow my evidence to be taken before the date set for the trial proper.

SWORN by the said AMMAI at Madras this
31st day of January 1978 before
me and I certify that I read over and
explained and interpreted this affidavit
to the deponent in the Hindustani language
and she appeared perfectly to understand
and approve of the same.

Left thumb mark of

AMMAI

Sgd. V.N.Singh

A Commissioner of the Supreme Court of India

11/11/78

CERTIFIED TRUE COPY

K. P. Singh



REPUBLICAN PARTY OF THE STATE OF TEXAS
MEMBER LIST

MEMBER LIST

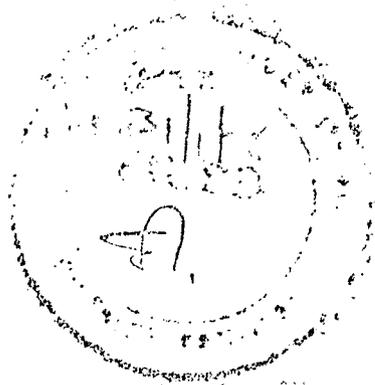
NO. 109 of 1977

MEMBER NAME ADDRESS CITY

AND MAILING ADDRESS CITY

AND MAILING ADDRESS CITY

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MEMBER NAME ADDRESS CITY

SHARPE, SIMPSON & CO.,
GENERAL MANAGERS
MEMBER LIST
MEMBER NAME ADDRESS CITY

O N A P P E A L

FROM THE FIJI COURT OF APPEAL

B E T W E E N :

1. RAJ KUMARI (d/o Lakhan Singh)
2. YENKAIYA NAIDU (s/o Appana)

Appellants
(Defendants)

- and -

SUBARMANI (s/o Ponsami)
representing the estate of
Ammai (d/o Nag Reddy) deceased

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB

Solicitors for the Appellants

A.L. PHILIPS & CO.
6 Holborn Viaduct,
London, EC1A 2AH

Solicitors for the Respondent