

Bandarupalli Mastanamma Being Minor Represented by the Next Friend and Mother Bandarupalli Nagaratnamma and ors. Vs. Ganguri Adinarayana and ors.

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Court : Andhra Pradesh

Decided On : Apr-03-1964

Reported in : AIR1966AP104

Judge : Krishna Rao, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 126; [Contract Act, 1872](#) - Sections 16(1), 16(3) and 19-A

Appeal No. : Appeal No. 216 of 1960

Appellant : Bandarupalli Mastanamma Being Minor Represented by the Next Friend and Mother Bandarupalli Nagaratna

Respondent : Ganguri Adinarayana and ors.

Advocate for Def. : P.A. Choudhary, Adv.

Advocate for Pet/Ap. : M. Venkata Subbarao, Adv.

Disposition : Appeal dismissed

Judgement :

Krishna Rao, J.

1. This appeal arises out of a suit brought on 29-3-1957 by the first appellant, Mastanamma, who died during the pendency of the appeal and is now represented by appellants 2 and 3, Musaliah and Nagarattamma, her father and mother respectively. She was a minor aged about six years and was represented in the suit by Nagarattamma as her next friend. She asked in the suit for a declaration of her title and for partition and separate possession of a one-fourth share in the plaint A schedule properties on the foot of Exhibit A. 1, a registered gift deed dated 22-1-1957 executed in her favour by the 1st defendant, Adinarayana. Defendants 2 and 3 were Adinarayana's elder brothers and the 4th defendant was Adinarayana's father. It was alleged in the plaint that defendants 1 to 3 were divided in status from the 4th defendant, but that the plaint A schedule properties belonging to their family were not divided by metes and bounds. Exhibit A-1 recites that defendants 1 to 4 were members of a joint family, that the 1st defendant had determined to live separately, that Nagarattamma, who was his paternal uncle's daughter, had promised to maintain him properly and that out of love and affection for the minor Mastanamma, he gave his undivided one-fourth share in the joint family properties to her with absolute rights. The gist of the defence was that Nagarattamma with whom the 1st defendant was having illicit intimacy had obtained Exhibit A-1 by misrepresentation as to the nature of Exhibit A-1 and by undue influence and that the 1st defendant has cancelled Exhibit A.1 by the cancellation deed, Exhibit A.2 dated 22-2-1957. The learned Subordinate Judge, after a careful consideration of the evidence, held that the alleged misrepresentation namely, that Exhibit A-1 was a document for initiating proceedings

for obtaining his share in the joint family properties to the 1st defendant, was not made out. But he found that Exhibit A-1 was vitiated by undue influence and that the cancellation thereof under Exhibit A-2 was therefore valid under Section 126 of the Transfer of Property Act. He accordingly dismissed the suit and Masthanamma, being aggrieved, has preferred the appeal.

2. Under the second paragraph of Section 126 of the Transfer of Property Act, a gift may be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Under Section 19A of the Contract Act, when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. It follows that where a gift was obtained by undue influence the donor has power to revoke it. This position is not disputed by Sri M. Venkata Subba Rao, the learned counsel for the appellant. The decisions in *Ankamma v. Narasayya*, AIR 1947 Mad 127 and *Venkatasubhaiah v. Subbamma* AIR 1956 Andhra 195, cited by him, dealt with cases where the donor had no power to revoke the gift and are therefore of no assistance to him. For the same reason, the rule enunciated in *Villers v. Beaumont* (1682) 23 ER 342 that 'if a man will improvidently bind himself up by a voluntary deed, and not reserve a liberty to himself by a power of revocation, this court (Equity) will not loose the letters he hath put upon himself' has also no application.

3. The only question that arises for consideration is whether the gift under Exhibit A-1 was induced by undue influence. The doctrine of undue influence is enunciated in Section 16 of the Contract Act. In *Ladli Parshad v. Karnal Distillery Co.*, : [1964]1SCR270, his Lordship Shah J., analysed Section 16 thus:

"A transaction may be vitiated on account of undue influence where the relations between the parties are such that one of them is in a position to dominate the will of the other and he uses his position to obtain an unfair advantage over the other. It is manifest that both the conditions have ordinarily to be established by the person seeking to avoid the transaction; he has to prove (a) that the other party to a transaction was in a position to dominate his will and (b) that the other party had obtained an unfair advantage by using that position.

Clause (2) lays down a special presumption that a person is deemed to be in position to dominate the will of another (i) where he holds a real or apparent authority over the other, or (ii) where he stands in a fiduciary relation to the other or (iii) where he enters into a transaction with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. Where it is proved that a person is in a position to dominate the will of another (such proof being furnished either by evidence or by the presumption arising under Sub-section (2)) and he enters into a transaction with that other person which on the face of it or on the evidence adduced, appears to be unconscionable, the burden of proving that the transaction was not induced by undue influence lies upon the person in a position to dominate the will of the other. But Sub-section (3) has manifestly a limited application; the presumption will only arise if it is established by evidence that the party who had obtained the benefit of a transaction was in a position to dominate the will of the other and that the transaction is shown to be unconscionable. If either of these two conditions is not fulfilled the presumption of undue influence will not arise and burden will not shift.'

4. The two elements of undue influence are given in Sub-section (1) of Section 16. In *Poosathurai v. Kannappa Chettiar*, ILR 43 Mad 546 at p. 518: (AIR 1920 PC 65 at p. 66) Lord Shaw elucidated them as follows:

'It is a mistake (of which there are a good many traces in these proceedings) to treat undue influence as having been established by a proof of the relations of the parties having been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it. Up to that point 'influence' alone has been made out. Such influence may be used wisely, judiciously and helpfully. But, whether by the Law of India or the Law of England, more than mere influence must be provided so as to render influence, in the language of the law, 'undue'. It must be established that the person in a position of domination has used that position to obtain unfair advantage for himself, and so to cause injury to

the person relying upon his authority or aid'.

5. The matters which are usually relevant in appraising the proof where a gift is impeached on the ground of undue influence were explained by Lord Macnaghten in *Mahomed Buksh Khan v. Hosseini Bibi*, ILR 15 Cal 684 (PC) at pp. 698 to 700 to be (1) whether the transaction is a righteous transaction, that is, whether is a thing which is a right-minded person might be expected to do; (2) whether it was an improvident act, that is to say, whether it shows so much improvidence as to suggest the idea that the donor was not master of himself and not in a state of mind to weigh what he was doing; (3) whether it was a matter requiring a legal adviser and (4) whether the intention of making the gift originated with the donor.

6. The cases cited by the learned counsel for the respondents illustrate the application of these principles. In *Sital Prasad v. Parbhu Lal*, ILR 10 All 535 the Allahabad High Court set aside a deed of gift executed by an indigent Brahman to a temple of which the defendant had charge, it having been found that the donor was a man not up to the ordinary standard of intelligence and was under influence of the defendant and the transaction was hopelessly improvident. In *Mannu Singh v. Umadat Pande*, ILR 12 All 523 the same High Court set aside a gift of the whole of his property by a Hindu well advanced in years to his guru or spiritual adviser, the only reason for the gift being the donor's desire to secure benefits to his soul in the next world. In *Manbhari v. Sri Ram*, AIR 1936 All 672 an ignorant young man, who has just attained his majority and whose mind was clouded and affected by hemp smoking, sold his property for grossly inadequate consideration to his 'guru. The Allahabad High Court set aside the sale on the ground of undue influence. In *Shivagangawa v. Basangouda*, AIR 1938 Bom 304 a paramour obtained a gift of all the properties from his mistress and drove her away. The Bombay High Court held that the gift must be presumed to have been obtained through undue influence and that even the existence of a possibility of exercising undue influence from confidence created or established by the relation between the donor and the donee is sufficient to cast the burden on the donee. In *Ahmad Ibrahim v. Meyyappa*, AIR 1940 Mad 285 Varadachariar, J., who spoke for the Division Bench of the Madras High Court, quoted with approval the observation of Lord Macnaghten in *Bank of Montreal v. Stuart*, 1911 AC 120 at p. 137.

'It may well be argued that when there is evidence of overpowering influence and the transaction brought about is immoderate and irrational..... proof of undue influence is complete.'

7. The contention of Sri M. Venkata Sub-ba Rao is that the learned Subordinate Judge has based his conclusion entirely on the illicit intimacy between the plaintiff's mother and the 1st defendant which was denied by the plaintiff's mother as P. W. 1 and the proof of which mainly depended on the 1st defendant's evidence as D. W. 1. He refers to the 1st defendant's answer in cross examination 'I am given to debauchery in several cases including the plaintiffs mother', and argues that as the plaintiff's mother could have been only one of the mistresses of the 1st defendant she could have had no special influence upon him. He urges that the 1st defendant might well have executed Exhibit A. 1, because on his own showing, he was hurt by the conduct of the members of his family towards him and the plaintiff's family had maintained him for about a year previously.

8. I see no substance in this contention. The learned Subordinate Judge has relied for his conclusion on a number of circumstances which have been established beyond doubt by the evidence and which he has set out in paragraph 12 of his judgment. The first defendant was a young man aged about 20 to 22 years when he executed Exhibit A-1. His demand for partition was not complied with. They wanted him to marry his sister's 'daughter to which he did not agree and on account of these disputes they drove him out of the family house. Although he had a number of other relatives in the village, he sought shelter and advice from the plaintiff's mother who was the wife of a drunkard and a wayward person and was only distantly related to him. Even if he had some friendship or affection for the plaintiff's mother, there is absolutely no reason for his affection to the plaintiff who was a child aged about six years. His giving away of his entire undivided property suggests that it is not the transaction of a right-minded person. The persons who look a prominent part in attestation and identification for Exhibit A-1 were P. Ws. 2 and 3, who were admittedly long-standing enemies

of the 1st defendant's family. The natural conclusion from all the circumstances is that he was affected by mental distress at the time owing to the treatment meted out to him by the members of his family. The transaction under Exhibit A. 1 was on the face of it unconscionable. Thus the facts give rise to the presumption under Section 16(3) of the Contract Act. Nagarattamma in her evidence gives no rational explanation whatever for the gift. She denies having agreed to maintain him as mentioned in Exhibit A. 1. In fact she says:

'The recital in Ex. A. I that I agreed to maintain is false, I do not agree to maintain him. I did not know what affection 1st defendant had for plaintiff to convey the property.' Clearly the presumption under Section 16(3) of the Contract Act is far from having been rebutted. Even apart from the presumption, the only possible inference from the circumstances on the whole is that the plaintiff's mother unfairly took advantage of the 1st defendant's situation and her illicit relationship with him and prevailed upon him to execute Exhibit A-1 by exercising undue influence. I have no hesitation in agreeing therefore with the lower Court that Exhibit A-1 was induced by undue influence and that the cancellation thereof by the 1st defendant is valid under Section 126 of the Transfer of Property Act.

9. The appeal fails and is dismissed with costs.

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