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Court : Chennai

Decided On : Feb-15-1996

Reported in : (1996)2MLJ358

Appellant : Chinnappa Alias Gopal Raja

Respondent : Ayyanar Raja and anr.

Judgement :

S.S. Subramani, J.

1. Legatee of the plaintiff in O.S. No. 151 of 1979, on the file of the District Munsif's court, Srivilliputtur, is the appellant.
2. The suit filed by the plaintiff (who is now no more) is one for cancellation of a settlement deed dated 28.4.1973, executed by her in favour of the first defendant, and also for a permanent injunction restraining the first defendant from interfering with her peaceful possession and enjoyment of the suit properties.
3. The material averments in the plaint are as follows: The plaint mentioned property originally belonged to the plaintiff. She is in possession of the same ever since her husband's death in the year 1961. A portion of the plaint schedule property is a Government poramboke, and the same is described as Item No. 2 in the plaint. It is averred that the plaintiff wanted to create a Trust in so far as Item No. 2 was concerned, and, for the said purpose, she wanted the help of the first

defendant who is none other than her nephew. It is further averred that ever since her husband's death, the first defendant was very much affectionate towards the plaintiff and the plaintiff also reposed complete confidence in him. Further, plaintiff was also becoming old and she was falling sick now and then. Because of the confidence reposed in him, plaintiff requested the first defendant to create a Trust in so far as second item of the schedule property's concerned. But, taking advantage of the plaintiff's innocence and confidence, first defendant obtained a registered settlement deed in so far as all the properties are concerned. Plaintiff came to know about the settlement deed only long time thereafter, and she cancelled the same as per registered document on 5.4.1978. She also issued a lawyer's notice to the first defendant stating that the property belonged to her and that he should not interfere with her possession and enjoyment of the property. A reply was sent by the defendant denying the allegations contained in the notice. He also mentioned in that reply that the property was voluntarily gifted to him and that the same is valid. It is said that for the purpose of cancellation, the suit was filed.

4. In the written statement filed by the first defendant, he has said that he never took advantage of her old age, and that he did not create any fraudulent document. He said that the document is genuine and the same was acted upon to the knowledge of the plaintiff. He said that he was not in a dominating position, nor did he influence the plaintiff in any way for executing the settlement deed. He said that the suit was filed only at the instance of one Krishnamaraja, plaintiff's elder sister's son, and that it was only at his instance the revocation deed was also executed. He has further stated that he has effected improvements in the property, and that the plaintiff has no cause of action.

5. Before the trial court, plaintiff got herself examined as P.W.1 and marked Exs.A-1 to A-37. On the side of the defendants, first defendant got himself examined as D.W.1. On their side, Exs.B-1 to B-17 were marked. Most of the documents filed on either side are tax receipts or notice of demand from revenue authorities. Ex.A-32 is the registration copy of the settlement deed, the original of which is produced by the defendants as Ex.B-1. Ex.A-33 is the registered cancellation deed executed by the plaintiff.

6. Taking into consideration the entire evidence, both oral and documentary, and also the age of the plaintiff, the trial court gave a decree in her favour. A reading of the judgment of the trial court makes it clear that it was moved more by the age of the plaintiff than being convinced by her evidence.

7. Against the judgment of the trial court, first defendant preferred A.S. No. 11 of 1981, on the file of the Subordinate Judge, Srivilliputtur. The lower appellate court held that there are no vitiating circumstances and the settlement deed was executed voluntarily and the first defendant was also not in such a position as to influence the plaintiff or dominate her to execute the settlement deed. The appeal was allowed, and the suit was dismissed. It is against the said judgment, legal representative of the plaintiff as her legatee has filed this second appeal, since, in the meantime, the plaintiff died.

8. At the time of admission of the second appeal, the following substantial question of law was framed for consideration:

Whether the suit is barred by limitation?

9. Even though the question of law raised was regarding limitation, argument was advanced mainly on the burden of proof and also about the vitiating circumstances of the document. In view of that, I feel it better to frame the following substantial question of law also:

Is not the burden of proof wrongly cast on the appellant' which vitiated the decision?

10. The suit is filed for setting aside a document, admittedly executed by the plaintiff contention raised is, that the plaintiff had great affection and confidence on the first defendant. She was also old and feeble-minded, and her weakness, both physical and mental, was exploited by the first defendant, for creating the document Ex.B-1.

11. Before discussing the evidence in this case, it is better that we consider what is the case that is put forward by the plaintiff. In paragraph 7 of the plaint, she said that the first defendant is her brother's son and that she was very much

affectionate towards him. She was becoming old and weak and was not in a position to walk, and her vision was also not clear. She has further stated that she becomes unconscious quite often for the last ten years prior to the filing of the suit, and that in such difficult circumstances, the first defendant was assisting her. Because of this, plaintiff reposed confidence in the first defendant, and she was completely under his protection and care. While so, plaintiff wanted the second item in the plaint Schedule to be used for the purpose of chanty and wanted a Trust to be created. She made a request to the first defendant for the said purpose. First defendant represented to the plaintiff on 28.4.1973 that a Trust has been created and he wanted the plaintiff to sign the same before the Sub Registrar. Plaintiff who had complete confidence in the first defendant and who was also helping her, believed his words and signed the same. But later she came to know that the document which the plaintiff signed was a settlement in respect of Item No. 1, in the 3rd week of November 1977, and she obtained a certified copy of the same. It is said that on a reading of that document, she came to know that she had executed a settlement deed in respect of a property and that what she had retained was only a right of enjoyment. It is said that the plaintiff had no intention to execute any such document in favour of the first defendant and that she never arranged for the same with the first defendant. In paragraph 8 of the plaint, it is stated that when the plaintiff asked the first defendant about the same, he did not give any reply. But he became inimical towards her and, therefore, on 5.4.1978 the document was cancelled. Thereafter, a registered notice was also sent by the plaintiff through advocate, informing the first defendant about the cancellation. The first defendant received the same and sent a reply on 11.5.1978 stating that the settlement deed was executed voluntarily and that he has not committed any fraud on the plaintiff. Plaintiff said that it was only because of the fraud or cheating committed by the first defendant, Ex.B-1 came into existence. The remaining portion of the plaint is not relevant, and hence its summary is not given.

12. Ex.B-1 is the registered settlement deed. Nowhere the plaintiff has a case that the Registering Authorities also colluded with the first defendant in creating the document. A Certificate of Registration presumes that the document has been validity executed. Of course, it is a rebuttable presumption. When the plaintiff has

no case that the Registering Authorities also colluded with the first defendant and that the formalities with regard to registration were not complied with, that is a big circumstance, which stands against her.

13. In Sanjiva Row's 'Registration Act' - 8th Edition (1995) - at page 593, learned Author, commenting on Section 60, says:

The whole object of the Registration Act is to guard against fabrication of documents of title from time to time, and the real purpose of registration is to check forgery and to provide good evidence of the genuineness of the written documents. Registration is mainly required for the purpose of giving notoriety to the deed and to provide a genuineness of the instrument. The evidence of registration is itself some evidence of execution against the person by whom it purports to be executed. The certificate of registration is some evidence of execution against the party making admission....

14. In Mathu v, Cherchi, (1990) 1 K.L.T. 416, a learned Judge of the Kerala High Court held thus:

Registration of a document is a solemn act to be performed in the presence of the Registrar, where duty is to attend to the parties during registration and see that proper persons competent to act are present, and they are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature, will, unless it is shown that some deliberate fraud was successfully committed on him, be presumed to be done duly and in order Gangamoyi Debi v. Troiluckhya Nath Chowdhry I.L.R. 33 Cal. 537 (P.C). Though Ex.A-2 is a document required to be attested, examination of attesting witness in proof of execution is necessary under Section 68 of the Evidence Act only when execution is denied. In this case, execution is admitted. If so, under Section 67 of the Evidence Act, proof can be by any evidence. The evidence furnished by the registration certificate under Section 63 of the Registration Act coupled with the presumption under Illustration (e) to Section 114 of the Evidence Act support by the admission of the respondent and the depositions of D.Ws.2 and 3 will be more than sufficient Sumathi Amma v. Kunjulekshmi Amma 1964 K.L.T. 945 and Kunhamima Umma v. Special Tahsildar and Ors. I.L.R. (1976) Ker. 678.' Along

with this, let us consider as to what she has deposed while she was examined as P.W.1. Nowhere in her deposition, she has stated that it was due to the influence of the first defendant that she executed such a document. She said that she had no intention of giving any property to the first defendant and that the first defendant fraudulently obtained signature from her and that she is not aware in which document such a signature was obtained. She has stated that she came to know about it only four years after that incident. In cross-examination, she has said that she never requested the first defendant for any help for the purpose of executing any document in respect of item No. 2, nor did she want to create any Trust in respect of the same. She further said that she was aware of a settlement about eight years before she deposed in the trial court (she gave her evidence in October, 1980). That also shows that from the very beginning, she was aware of the nature of the document.

15. Coupled with that evidence, let us consider the notice given by the plaintiff (marked as Ex.A-34). In that notice also, plaintiff has no case that the first defendant was responsible for creating such a deed. Ex.A-34 was preceded by Ex.A-33 cancellation deed. According to me, the statement in the cancellation deed will show that Ex.B-1 was executed voluntarily by the plaintiff. In Ex.A-33, she says that she has executed a settlement deed. But, after execution of the deed, first defendant was acting against her wish and, therefore, she is cancelling it. It is not her case in Ex. A-33 that she was not aware of the contents of the document or that she was influenced by the first defendant for getting the document executed.

16. When Ex. A-33 is silent about undue influence or misrepresentation, or fraud alleged by the plaintiff, it is too much for the plaintiff to allege in the plaint a different story. As stated earlier, P.W.1 had no intention of creating a Trust even in respect of Item No. 2, nor had she any intention to execute a document in that respect. For that reason also, here allegation in the plaint that she requested the first defendant to create a trust in so far as the Item No. 2 of the schedule mentioned property was concerned, and making use of that, the first defendant asked her to Sign a document (Ex.B-1) cannot be accepted. A reading of the deposition of P.W.1 shows that she is not a lady who can be trapped as she

claims to be she is an independent witness who knows the pros and cons of every act.

17. Learned Senior counsel for the appellant submitted that the first defendant himself has admitted that he was looking after the plaintiff and that she had absolute confidence in him. It is said that in view of the said statement or admission by the first defendant, the burden is only on him to prove that the transaction had taken place in good faith. Section 11 of the Evidence Act was relied on by learned Senior Counsel for the said purpose.

18. I cannot agree with the said submission.

19. In *Ladli Parshad v. Karnal Distillery Co.* : [1964]1SCR270 , their Lordships considered a similar question in Paragraphs 24 to 26 of the judgment, their Lordships have dealt with the law exhaustively, and those paragraphs may usefully be extracted:

The pleading which was regarded as one of undue influence also suffers from a lack of particulars. How the plaintiff took advantage of his position as a person in possession of the assets of the company and by what device he compelled the defendants to submit to his will has not been stated. Section 16 of the Indian Contract Act, which incorporates the law relating to undue influence in its application to contracts is but a particularisation of a larger principle. All transactions procured in the manner set out therein, are regarded as procured by the exercise of undue influence. Section 16 of the Contract Act provides:

(1) A contract is said to be induced by undue influence' where the relations subsisting between the parties are such that one of the parties, is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872.

The doctrine of undue influence under the common law was evolved by the courts in England for granting protection against transactions procured by the exercise of insidious forms of influence spiritual or temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian enactment is founded substantially on the rules of English common law. The first sub-section of Section 16 lays down the principle in general terms. By Sub-section (2) a presumption arises that a person shall be deemed to be in a position to dominate the will of another if the conditions set out therein are fulfilled. Sub-section (3) lays down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third sub-section is that a person who has obtained an advantage over another by dominating his will, may also remain in a position to suppress the requisite evidence in support of the plea of undue influence.

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 that the other party to a transaction was in a position to dominate his will and 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 where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other or 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.

20. The said decision was followed again by the Supreme Court in the decision reported in *Afsar Sheikh and Anr. v. Soleman Bibi* : [1976]2SCR327 . In that case, their Lordships considered how a case of undue influence will have to be decided by a court of law. Their Lordships said that there are three stages which have to be fully proved and the evidence must be in the order in which it is narrated. The relevant portion of the said decision reads thus:

The law as to undue influence in the case of a gift inter vivos is the same as in the case of a contract. It is embodied in Section 16 of the Indian Contract Act. The conditions stated in Section 16(1) must be pleaded with particularity and proved by the person seeking to avoid the transaction. Sub-section (2) is illustrative and Sub-section (3) contains a rule of evidence. For the burden to shift on the done both the conditions therein must be satisfied. Three stages for consideration emerge; firstly, whether the plaintiff or the party seeking relief on the ground of undue influence has proved that the relations between the parties to each other are such that one is in a position to dominate the will of the other; secondly, the influence amounted to 'undue influence', and thirdly, the transaction is unconscionable. Then only the burden of proving that it was not induced by undue influence is to lie

upon the person who was in a position to dominate the will of the other. It is imperative that these considerations be taken up in this order itself. It may be said that the facts of the abovesaid decision are more or less similar to the facts on hand.

21. The evidence of D.W.1 cannot be such that it casts burden of proof on him. What speaks is only the way in which he was looking after and how much affectionate he was towards her. According to him, ever when the plaintiff was sickly, he was the only person to look after her and she had absolute confidence in him-and he never violated that confidence. When the plaintiff has no case that it was due to the influence of the first defendant that she executed the deed, there cannot be any question of any fraud committed by the first defendant or that she executed the same without knowing its contents. If there is no influence, there cannot be any undue influence at all. D.W.1 has also spoken that after the execution of Ex.B-1, the amount was being collected and sent to her, and the second defendant was also paying rent to her. She recognised the tenancy of the first defendant granted by the second defendant, after Ex.B-1. His case is that the relationship became strained only because of her elder sister's son wanted to gain something out of the misunderstanding between them. His evidence is that even now he loves her.

22. The lower appellate court, after taking into consideration the entire evidence has come to the correct conclusion that the documents were executed voluntarily, and that she was aware of its full contents. From the date of execution itself, the first defendant is in occupation of the property. The substantial question of law is whether the suit is barred by limitation.

23. The plaintiff was well aware of the contents of the document (settlement deed) from the date of its execution. The question of getting knowledge afterwards is belied by her own admissions in her evidence. The suit is therefore, liable to be dismissed on the ground of limitation.

24. On the additional substantial question of law hold that the importance of burden of proof loses its significance when both parties have adduced evidence. But in spite of the same, I hold that the burden is only on the plaintiff to prove that

the document executed by her was under the influence or that she did not have the intention to execute the document. That initial burden cast on her was not discharged, hold that there is no miscarriage of justice on account of the so called wrong casting of burden. I am of the view that the decision of the lower appellate court does not call for any interference.

25. Taking into consideration the relationship between the parties, I feel it is better to direct them to surier their own costs.

26. In the result, the second appeal is dismissed. Parties to bear their own costs.

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