

BELLACHI (DEAD) BY LR

V.

PAKEERAN

Civil Appeal No. 1785 of 2009

MARCH 23, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ]

Code of Civil Procedure, 1908:

s. 100 – Second appeal – Jurisdiction of High Court – HELD: High Court can interfere with concurrent findings of two courts below if any substantial question of law arises for its consideration – Findings of courts below were not stated to have been vitiated by any illegality or omission or error or defects as envisaged by s.100.

Or. 6 r. 4 – Suit challenging a sale deed as vitiated by misrepresentation, undue influence, fraud and collusion – HELD: The party alleging undue influence, fraud etc. must prove the same – Trial court as also the first appellate court having held that plaint did not contain any particulars of undue influence, fraud etc., High Court rightly dismissed the second appeal.

Contract Act, 1872:

s.16 – Undue influence – HELD: Relation between parties so as to enable one of them to dominate the will of the other is sine qua non for constitution of undue influence – Trial court and first appellate court having arrived at the finding that defendant was not in a position to dominate plaintiff's will, High Court rightly declined to interfere.

The plaintiff-appellant filed a suit challenging a sale deed alleged to have been executed by her in favour of her younger brother, the defendant. It was contended that the sale deed was vitiated by misrepresentation, undue influence, fraud and collusion as the plaintiff was made

A to believe that she would obtain financial assistance for
treatment of her husband's prolonged illness by executing
the said document. The trial court dismissed the suit
holding that the plaint did not satisfy the requirements of
Or.6, r.4 CPC, as particulars of fraud and undue influence
B were not pleaded and the plaintiff was not able to establish
that the defendant had been in a position so as to unduly
influence her or that the sale deed was executed by her
under misrepresentation. The first appellate court affirmed
the said findings. The second appeal of the plaintiff was
C dismissed by the High Court.

In the instant appeal filed by the plaintiff, it was
contended for the appellant that the courts below
committed an error of law in so far as they failed to take
into consideration that the relationship between the
D vendor and vendee being that of sister and brother and
the appellant being an illiterate old lady, the onus of proof
was upon the defendant-respondent to show that the sale
deed was genuine and amount of consideration had been
received by vendor, and as no officer of Registration Office
E was examined in this regard, the vendee must be held to
have failed to discharge the onus.

Dismissing the appeal, the Court

F HELD: 1.1 The jurisdiction of the High Court in terms
of s.100 of the Code of Civil Procedure, 1908 is limited. It
can interfere with the concurrent findings of two courts
below if any substantial question of law arises for its
consideration. Whether the respondent despite the fact
that he was brother of the appellant was in a dominating
position is essentially a question of fact. Per se it does
G not give rise to a substantial question of law. [para 10]
[829-E-F]

Afsar Sheikh and Anr. Vs. Soleman Bibi and Ors. 1976
(2) SCC 142 – relied on.

H 1.2 The trial court as also the first appellate court *inter*

alia held that the very basis of the claim of the appellant was that the respondent had been very close to her and had been visiting her quite often and thus was a man of trust had not been established. A concurrent finding of fact has also been arrived at that the plaintiff was not a person wholly incapable of understanding things. It was furthermore held that the plaintiff had sufficient funds for her own treatment as also for the treatment of her husband and thus the story that she was made to believe that she would be rendered financial assistance by some banks so as to enable her to meet the expenses for her husband's treatment, is not correct. The said concurrent findings of the fact ordinarily are binding on the High Court while exercising its jurisdiction u/s 100 of the Code. [para 11-13] [829-G; 830-B-D]

2.1 Section 16 of the Contract Act, 1872 defines 'undue influence'. Relationship between the parties so as to enable one of them to dominate the will of the other is a *sine qua non* for constitution of undue influence. Findings of fact have been arrived at by both the trial court as also the first appellate court that the respondent was not in a position to dominate the plaintiff's will. It was, furthermore, noticed that plaintiff's husband as also her daughter were government employees.[para 13 and 15] [831-D-E; 830-C-D]

2.2 In a given case it is possible to hold that when an illiterate, pardanashin woman executes a deed of sale, the burden would be on the vendee to prove that the deed of sale was a genuine document. It is, however, a registered document. It carries with it a presumption that it was executed in accordance with law. Again a concurrent finding of fact has been arrived at that the plaintiff was not an illiterate woman nor was she incapable of understanding as to what she had done. Furthermore, both the courts below have held that the plaint does not contain any particulars of undue influence, fraud etc. The law does not envisage raising of a presumption in favour

A of undue influence. A party alleging the same must prove the same subject of course to just exceptions.[para 16, 18] [831-F; 832-F-G]

M. Rangasamy Vs. Rengammal and Ors. (2003) 7 SCC 683 – relied on.

B *Mst. Sethani Vs. Bhana* 1993 Supp. (4) SCC 639 – distinguished.

Case Law Reference

C	1976 (2) SCC 142	relied on	para 13
	1993 Supp. (4) SCC 639	distinguished	para 17
	(2003) 7 SCC 683	relied on	para 18

D CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1785 of 2009

From the Judgement and Order dated 26.06.2007 of the High Court of Kerala in R.S.A. No. 254 of 2007.

E P.V. Dinesh, for the Appellants.

A. Raghunath, for the Respondents.

The Judgement of the Court was delivered by

S.B. SINHA, J :

F 1. Leave granted.

2. Appellant is the plaintiff in Original Suit No. 36 of 2000 filed in the Court of Munsiff, Kasargod. Defendant-respondent is her younger brother.

G 3. Subject matter of the suit was a deed of sale dated 7th October, 1999 executed by her in favour of the respondent. The amount of consideration was shown therein to be a sum of Rs. 20,000/-. Contention of the appellant in the said suit was that the said deed of sale is vitiated by misrepresentation, undue influence, fraud and collusion as she was made to believe that

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she would obtain financial assistance by executing the said document. According to her, she had reposed complete faith and trust in her brother who used to visit her place often. A

It was also her contention that when her husband was in bed due to prolonged illness, she was taken away from her house and made to sign some documents. According to her she came to know with regard to execution of the aforementioned deed of sale when some officers of the bank visited the suit land to take measurement thereof. Respondent in his written statement however stated that the deed of sale was executed voluntarily by the appellant upon receiving the amount of consideration. B C

4. The learned Trial Judge in view of rival pleadings of the parties framed the following issues:

- (i) Whether the sale deed was validly executed in favour of the plaintiff? D
- (ii) Whether the alleged cause of action is true?"

5. Inter alia holding that the plaint does not satisfy the requirements of Order VI Rule 4 of the Code of Civil Procedure as particulars of fraud, undue influence were not pleaded and furthermore having regard to the fact that the plaintiff had admitted in her deposition that except once the respondent had not visited her, the suit was dismissed. E

It was opined that the plaintiff had not been able to establish that the defendant had been in such a position so as to dominate over her will and /or the said deed of sale was executed by her under misrepresentation, undue influence or collusion. As regards execution of the sale deed, it was stated as under : F

"Order VI Rule 4 and Order VI Rule 2 of the Civil Procedure Code, makes it clear that there shall be specific pleading with sufficient particular regarding the fraud or undue influence misrepresentation etc. which is lacking in this case. I have already stated that there is no scope for any G H

A collusion in the execution of Ext. B.5. At the same time there is no sufficient material to show that the defendant was in such a position so as to dominate the will of the plaintiff, and he got executed Ext. B5 under fraud, misrepresentation, collusion and undue influence.”

B 6. The first appellate court affirmed the said findings of the learned Munsiff noticing that the appellant herself had deposed that the defendant had left her house about fifteen years back and came to her house only when her husband was ill.

C Agreeing with the conclusions arrived at by the learned Trial Judge, it was held :

D “The execution of a document made to establish only if the same is denied. In this case the plaintiff admitted the signature and also execution of Ext. B5 but contended that it was obtained under undue influence, believing that she signed in papers necessary for getting government loan to the persons laid up due to illness. The evidence of DW1 and DW2 satisfactorily proved the execution of Ext. B5 deed. Ext. B2 to B4 documents would show that immediately after the execution of Ext. B5 the defendant started paying basic tax. In AIR 1976 SC 163 the Apex Court held that there shall be separate pleading about undue influence and the general allegation regarding the undue influence is not sufficient. Order VI Rule 4 and Order VI Rule 2 of Code of Civil Procedure make it clear that there shall be specific pleading with sufficient particular regarding the fraud or undue influence, misrepresentation etc. and absolutely no such specific pleadings are in this case and hence it has to be held that Ext. B5 was not executed under fraud, misrepresentation or collusion. But on the other hand the oral as well as documentary evidence show that Ext. B5 as executed by the plaintiff out of her free will and volition. Hence it has to be held that the sale deed Ext. B5 was validly executed by the plaintiff and hence it is not liable to be set aside.

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7. The second appeal preferred by the appellant thereagainst has been dismissed by the High Court by reason of the impugned judgment. A

8. Mr. P.V. Dinesh, learned counsel appearing on behalf of the appellant, would urge that the courts below committed a serious error of law in so far as they failed to take into consideration that the relationship between the vendor and vendee being that of sister and brother and the appellant being an illiterate old aged lady, the onus of proof was upon the defendant-respondent to show that the deed of sale was a genuine one and the amount of consideration specified therefor had been received by her. B C

It was furthermore urged that the respondent having not examined the Registrar or any other person from the registration office in regard to the execution of the aforementioned deed of sale and passing of the amount of consideration, must be held to have failed to discharge the heavy onus placed on him. D

9. Mr. Raghunath appearing on behalf of the respondent, however, would support the impugned judgment. E

10. The jurisdiction of the High Court in terms of Section 100 of the Code of Civil Procedure is limited. It can interfere with the concurrent findings of two courts if any substantial question of law arises for its consideration. Whether the respondent despite the fact that he was brother of the appellant was in a dominating position is essentially a question of fact. Per se it does not give rise to a substantial question of law. F

11. We have noticed hereinbefore that the Trial Court as also the first appellate court inter alia held that the very basis of the claim of the appellant was that the respondent had been very close to her and had been visiting her quite often and thus was a man of trust had not been established. G

12. Although the parties to the suit used to live together at one point of time, the respondent parted with her company 15 H

A years prior to the execution of the deed of sale. He had visited her house only when her husband fell ill.

B 13. A concurrent finding of fact has also been arrived at that the appellant was not a person wholly incapable of understanding things. It was furthermore held that the plaintiff had sufficient funds for her own treatment as also for the treatment of her husband and thus the story that she was made to believe that she would be rendered financial assistance by some banks so as to enable her to meet the expenses for her husband's treatment, is not correct.

C It was, furthermore, noticed that her husband as also her daughter (PW-2) were government employees.

D The said concurrent findings of the fact ordinarily are binding on the High Court while exercising its jurisdiction under Section 100 of the Code of Civil Procedure.

This Court in *Afsar Sheikh and Anr. Vs. Soleman Bibi and Ors.* reported in [1976 (2) SCC 142] held as under :

E "4. In his written statement, Afsar defendant denied the allegations of fraud and misrepresentation. He averred that his grandmother was the sister of the plaintiff's mother. The defendant's father died when he was an infant. The plaintiff brought him up as a son. Since his very infancy, the defendant has been living with the plaintiff, managing his affairs and treating him as his father. The defendant further stated that the plaintiff has transferred 10 to 12 bighas of land to his natural son and an equal area to his second wife. Out of love and affection, the plaintiff conferred a similar benefit on the defendant and voluntarily executed the *hiba-bil-ewaz* after receiving from the donee a *dhoti* as a *symbolic* consideration therefor. He denied that the plaintiff at the time of the gift was too old and infirm. According to him, the plaintiff was not more than 75 years of age. He further averred that he was in possession of the suit lands ever since the execution of the *hiba*."

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It was observed :

"20. It is well-settled that a question whether a person was in a position to dominate the will of another and procured a certain deed by undue influence, is a question of fact, and a finding thereon is a finding of fact, and if arrived at fairly, in accordance with the procedure prescribed, is not liable to be reopened in second appeal (*Satgur Prasad v. Har Narain Das; Ladli Prasad Jaiswal v. Karnal Distillery Co. Ltd.*)." .

14. It is not the case of the appellant that the finding of the first appellate court on the question of fraud, undue influence etc. is vitiated by any illegality, omission or error or defect as envisaged under Section 100 of Code of Civil Procedure.

15. Section 16 of the Indian Contract Act provides for as to what constitutes undue influence. Relationship between the parties so as to enable one of them to dominate the will of the other is a sine qua non for constitution of undue influence.

Findings of fact as noticed hereinbefore have been arrived at by both the trial judge as also the first appellate court that the respondent was not in a position to dominate the plaintiff's will.

16. In a given case it is possible to hold that when an illiterate, pardanashin woman executes a deed of sale, the burden would be on the vendee to prove that it was the deed of sale was a genuine document. It is, however, a registered document. It carries with it a presumption that it was executed in accordance with law. Again a concurrent finding of fact has been arrived at that she was not an illiterate woman or she was incapable of understanding as to what she had done.

17. Mr. Dinesh has placed strong reliance upon a decision of this Court in *Mst. Sethani Vs. Bhana* reported in [1993 Supp. (4) SCC 639] wherein having regard to the fact had been arrived at from the courts below, it was held :

"4. The facts are so glaring, still the onus to prove the

A issue has been over-emphasised. It is true that the initial
onus to prove undue influence was on the plaintiff-appellant,
but the onus, in the facts and circumstances of the case,
was easily discharged. It is the respondent who had
obtained the sale deed in his favour way back on April 1,
B 1963 by a registered sale deed, which saw the light at a
late stage of the trial. From the certified copy thereof it
was evident that no consideration passed at the time of
the sale. Nobody from the registration office was examined
to explain the sale. No evidence was led by the respondent
C to discharge the onus that the sale deed was executed
under no undue influence, even though the vendor was
old, blind, illiterate and a tribal woman totally at the mercy
of the respondent, with whom she was living till her death.
D The parties were so situated that Bhana-respondent was
in a position to dominate the will of Putlibai and was in a
position to obtain an unfair advantage over her. It is also
in evidence that Putlibai was dependent on the respondent.
E The trial court had given cogent reasons to come to the
finding that the sale deed was vitiated on account of the
condition in which Putlibai was put due to her relationship
with Bhana-respondent, as well as the manner and nature
of the transaction.

The factual matrix involved in the aforementioned case was,
thus, absolutely different.

F 18. Furthermore both the courts below have held that the
plaint does not contained any particulars of undue influence,
fraud etc.

G The law does not envisage raising of a presumption in
favour of undue influence. A party alleging the same must prove
the same subject of course to just exceptions.

In *M. Rangasamy Vs. Rengammal and Ors.* [(2003) 7
SCC 683], this court has held as under:-

H "Further, a perusal of the plaint shows that the execution

of Exhibits B-6 and B-7 has, in fact, not been disputed by A
the plaintiffs. The case set up by them is that the first
defendant, exercising dominating influence over his
grandmother, got the two settlement deeds executed from
her exploiting her old age, dim eyesight and mental
condition. It has been further pleaded that the first defendant B
had a fiduciary relationship with his grandmother and,
therefore, though normally it would be for a person who
pleads undue influence to establish the said fact, but in
view of this relationship, it is for the first defendant to prove
that the gift deeds were the result of free exercise of
independent will by the executant."

The said decision will apply in all fours in this case.

19. There is, thus, no merit in the appeal. It is dismissed
accordingly. However, in the facts and circumstances of this
case, there shall be no order as to costs.

R.P.

Appeal dismissed.