

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.1826 of 1998

JUDGMENT:

This Appeal is filed by the unsuccessful plaintiffs against the judgment and decree dated 06.04.1998 passed in O.S.No.403 of 1986 by the III Additional Senior Civil Judge, Vijayawada.

Since the plaintiffs are the appellants for the sake of convenience, the parties are referred to as 'plaintiffs and defendants' only in this appeal.

The case of the plaintiffs is that they are the reversioners and children of the siblings of one Sri Guruswamy Mudaliar. Sri Guruswamy had a wife called Rukhminamma and also a mistress called Balamma. Guruswamy, his wife and Balamma lived together. According to the plaintiffs, Guruswamy died intestate in 1955 and therefore Rukhminamma became the owner of the properties by virtue of the Hindu Succession Act. She, however, allowed Balamma to live as a licensee in the property. The plaintiffs stated that they were in good terms with Rukhminamma, but the defendants, who lived in the house adjacent to the house of Rukhminamma, slowly increased their acquaintance with her and prevailed upon her as a part of long-drawn plan to grab the property. Taking advantage of her old age, ailments, mental disorder and ignorance, they used undue influence and obtained two registered gift deeds dated 04.06.1983 and

26.10.1983 in favour of defendants 1 & 2 respectively. Therefore, the suit was filed questioning the gift deeds in question executed in favour of defendants 1 & 2 by the manipulation of defendants 3 & 4 and as a result of confidence trick, fraudulent misrepresentation etc. Defendants 1 to 4 in the words of plaintiffs are the conspirators. Defendants 5 to 11 are the tenants of the property. Hence, the suit is filed for a declaration that the plaintiffs are the actual owners of A & B schedule properties, for possession of plaint A & B schedule properties and cancellation of the gift deeds dated 04.06.1983 and 26.10.1983 and for recovery of rents from defendants 5 to 11.

The main contesting defendants 1 & 2 filed a written statement strongly denying the allegations and stating that the gift deeds are validly executed, out of love and affection by Smt. Rukhminamma; that they were taken in adoption by Rukhminamma and that in view of the fact that defendants 1 & 2 looked after and cared for Rukhminamma, she also executed a Will in 1980 in their favour and later executed the two gift deeds. They also contended that the story set up by the plaintiffs was absolutely false and that the gift deeds and the Will were executed by Rukhminamma in a good sound state of mind and that she was in possession of all her faculties. Therefore, they prayed that the suit should be dismissed with costs.

Based on the pleadings, the following issues were framed:

1. Whether the plaintiffs are entitled for declaration as prayed for in respect of plaint 'A' and 'B' schedule properties?
2. Whether the plaintiffs are entitled for possession of the plaint 'A' and 'B' schedule properties after ejecting the respective defendants there from?
3. Whether the plaintiffs are entitled for cancellation of the Will dated 30.06.1980 and gift deeds dated 04.06.1983 and 26.10.1983 as prayed for?
4. Whether the plaintiffs are entitled for rent or mesne profits, if so, at what rate?
5. Whether the suit is barred by limitation?
6. Whether the valuation of the suit and court fee paid thereon are not correct?
7. To what relief?

The parties went to trial. For the plaintiffs PWs.1 to 8 were examined and Ex.A.1 was marked. For the defendants, DWs.1 to 11 were examined and Exs.B.1 to B.75 were marked. Through PW.5, Ex.C.1 was also marked. After considering the oral and documentary evidence, the lower Court by its order dated 06.04.1998 dismissed the suit. This judgment is now assailed in the appeal.

This Court has heard Sri P.R. Prasad, learned counsel for the appellants/plaintiffs and Sri C. Subba Rao, learned counsel for the respondents/defendants

It is a settled and salutary principle of law that in a suit filed for a declaration, the burden of proof is squarely upon the plaintiff. It is also equally well settled that when a case is based upon fraud, misrepresentation, conspiracy etc., a greater standard of pleading and better quality of evidence is necessary to prove the case. As held in **Afsar Sheikh v. Soleman Bibi**¹ where elements of fraud, undue influence etc., are pleaded, the quality of pleading and the proof should be better. The pleading should set out the same with greater clarity and the evidence should also be clear. A portion in para-15 of the said judgment is reproduced here:

“15. While it is true that 'undue influence', 'fraud', 'misrepresentation' are cognate vices and may, in part, overlap in some cases, they are in law distinct categories, and are in view of Order 6, Rule 4, read with Order 6, Rule 2 of the CPC, required to be separately pleaded, with specificity, particularity and precision.

A learned single Judge of Karnataka High Court in a case reported in **Savithramma v. H. Gurappa Reddy**² held that in a case of fraud, the standard of proof is equal to that of a criminal case viz., there must be a proof beyond reasonable doubt.

In the case on hand, the plaintiffs pleaded that the defendants 1 to 4 played fraud, made fraudulent misrepresentation, exploited the innocence of Rukhminamma and got the two gift deeds executed. Para-13 of the plaint is to the following effect:

¹ AIR 1976 SC 163

² AIR 1996 Karnataka 99

“The said gift deeds executed in favour of the first and second defendants was void and not binding and cannot be enforced at law. They were the result of the confidence trick, fraudulent misrepresentation, deep long-drawn conspiracy and undue influence and wrongful restraint. The said Rukminamma did not execute the same voluntarily out of free will and volition with free consent and she did not know also the contents or the implications of the said documents.”

In view of the denial of this case by the defendants, the evidence introduced in this case is of critical importance.

The plaintiffs examined PWs.1 to 8. PW.1 is the 10th plaintiff in the suit. He is the son of the first plaintiff. The first plaintiff who is the main protagonist died during the pendency of the suit and hence, his legal representatives were added. This witness, PW.1 did not have personal knowledge of the facts of the case particularly about the conspiracy, fraud, undue influence etc. He clearly admits that he was born in 1954 and his entire education was at Hyderabad.

The second witness (PW.2) is P. Balamma, who as per the plaint, is the mistress of late Guruswamy. According to the plaintiffs, there was no marriage between Guruswamy and Balamma. But, PW.2 deposed that she was married to Guruswamy and that all her relatives have attended the said marriage. She deposed that Rukhminamma suffered from Blood Pressure (BP) and other ailments. In the chief examination itself, she admits that two Brahmin girls by name Ramadevi and Krishnaveni (defendants 1 & 2 in the suit) were very affectionate to Rukhminamma. But, she

denies that Rukhminamma executed a gift deed. She states that Rukhminamma was suffering from sugar and BP; that when she got high BP, she was not able to talk properly. She deposed about the events that transpired on the date of death. The entire deposition on 08.07.1996 is about the incidents on the date of Rukhminamma's death.

As was rightly pointed out by the learned counsel for the respondents/defendants, this witness who was living with Rukhminamma after the death of Guruswamy also did not speak anything about the so-called long drawn conspiracy and fraud played by defendants 1 & 2 with the help of defendants 3 & 4 to get the two gift deeds in question. The learned counsel points out that she was the best witness to speak about this alleged long drawn conspiracy, undue influence and fraud. But, he clearly points out that absolutely no evidence was introduced by this witness about what is pleaded. This witness also admits in her cross-examination that there is no proof of the medical treatment given for the alleged sickness of Rukhminamma. She admits there is no documentary proof to show that any money was given to the plaintiffs at Hyderabad.

The other witnesses (PWs.3 & 4), who were examined were not parties to the documents which are the subject matter of the challenge. They are relatives but they do not speak of any fraud/influence/conspiracy by the defendants to get the gift deeds. PW.5 is a tenant of Rukhminamma for a

certain period of time. But, in the chief examination, he clearly deposed that he knew plaintiffs 1 to 5, that he used to see Rukhminamma, but he does not know whether the plaintiffs 1 to 5 took Rukhminamma to their house at any time. He does not know whether two brahmin children used to come to her. He does not have any knowledge if she has executed any document. He states that 1st defendant forcibly took over the property in which he was residing but he later compromised with her. It is interesting to note that this witness is the 9th defendant in the suit, but he deposed as a plaintiffs witness. He admits that he is also known as M.S. Murthy, but he denies the signature on the vakalath and denies that he engaged an advocate by name Sri B.T. Vyas. He also denies the suit summons confronted to him and he does not know that they received by them. He also admits that he is deposing in the suit at the request of the third plaintiff. Therefore, his evidence is not helpful to prove the case of the plaintiffs and as noticed later his conduct actually supports defendants 1 & 2. PW.6 is the third plaintiff, who has been living abroad, from a very long time. He deposed that Rukhminamma was suffering from BP and sugar. He deposed that when she lost her voice once, they took her to Hyderabad for treatment. In the cross-examination, he admits that he does not know the door numbers or the boundaries of the property. He does not know the names of the neighbours and he has not filed any proof in the form of letters or

otherwise to show that Rukhminamma was suffering from any sickness. The learned counsel for the respondents/defendants pointed out that in this deposition also, there is absolutely no evidence forthcoming about the alleged misrepresentation, conspiracy, fraud etc., played on Rukhminamma by defendants 1 to 4.

One Sri K. Ramachandra Rao was examined as PW.7. As per his deposition, his calling is 'Medicine'. Initially, he deposed that he was a medical practitioner in his chief examination. But he admits that he never treated Rukhminamma. She got treatment from another Doctor. He never examined her about BP or sugar. He states that her health gradually deteriorated due to sugar and BP. She had reeling sensation and loss of memory. In the cross-examination, this witness admits that he did not have medical qualification to practice and he worked as 'Compounder' with one Dr. N. Satyanarayana. He also admits that he only possessed first aid certificate.

The next witness (PW.8) is V.M. Kummudavalli, who is the 5th plaintiff in the suit. She also does not have personal knowledge. But, she states that the second plaintiff-her brother, was a Doctor. According to her, her brother informed that Rukhminamma was suffering from TB, Diabetes and BP. She states that she has seen Rukhminamma two or three years prior to her death and that by then, she was weak. She also deposed that defendants 1 & 2 used to follow

Rukhminamma to Hyderabad. In her chief and cross-examination, she admits that defendants 1 & 2 accompanied/followed Rukhminamma to Hyderabad also. She did not speak of the fraud alleged and in fact states that she was not informed of the details or pleadings in the suit.

The learned counsel for the respondents/defendants submits that a reading of the entire evidence of all the witnesses put together shows that a) Rukhminamma was not suffering from such a disease as would prevent her from realizing the consequences of her actions or from realizing the consequences of execution of the two gift deeds; b) no medical prescription was filed nor was any Doctor examined or record produced to show that she was not in possession of mental faculties or that she was seriously sick; c) not the slightest evidence was introduced to show that defendants 1 to 4 practiced any fraud etc., as pleaded. The learned counsel drew the attention of the use of words conspiracy, fraud and undue influence etc., but he argued that there is no oral evidence to support the same. He argued that each of these alleged misdeeds are words of specific legal import and have distinct facts of proof. No evidence is forthcoming to prove the separate existence of each of these let alone their cumulative presence.

In contra distinction to this, the defendants have also introduced the evidence of DWs.1 to DW.11.

DW.1, Smt. T. Ramadevi is the first defendant in the suit. She deposed that she and her sister-second defendant live in the house next Rukhminamma and right from their childhood they were treated with love and affection by late Rukhminamma. She states that Rukhminamma was mentally strong and did not suffer from any ailments as mentioned. She deposed and marked Exs.B.1 to B.70. She marked Ex.B.69-Will and Exs.B.70 & 71-gift deeds. In her evidence, she deposed that the scribe and attestors of Ex.B.69 are no more. She also states that the attestors of the document Ex.B.70 are as the attestors of Ex.B.71. She has filed various documents to show her possession and enjoyment of the property. The witness also deposed that subsequent to the execution of Ex.B.69-gift deed. She filed rent control cases against the tenants in the property. Exs.B.47 to 68 are various documents pertaining to the said cases. In the cross-examination of this witness, she denies all the suggestions that were put to her that Rukhminamma was not affectionate towards her. She also denied a suggestion that Rukhminamma was non-vegetarian. She denied the suggestions that Exs.B.69 to B.71 were executed without the express consent of Rukhminamma. She denied a suggestion that the gift deeds were executed by Rukhminamma when she was not a good sound state of mind and stable mind and that as a part of conspiracy, after the will was executed the two gifts were executed.

The next witness, DW.2 is Smt. B. Lalithamba, who is a pensioner who resided close to late Rukhminamma. She deposed that defendants 1 & 2 were brought up by Rukhminamma, that Rukhminamma got them educated and looked after their maintenance. In her cross-examination, she again admits that Rukhminamma used to prepare food for all the persons including defendants 1 to 4 and she treated them equally.

DW.3 is the second defendant in the suit. She deposes in line with what her sister deposed as DW.1 and in line with her written statement. She states that Rukhminamma executed Exs.B.70 and B.71 in their favour and that she gave her consent to the same. She also deposed that Rukhminamma delivered possession of the property to her as stated in the gift deed. She identifies the photos that were taken at the time of marriages and states that Rukhminamma was hale and healthy at the time of execution of the gift and till her death. In the cross examination, she also states that she was living with Rukhminamma from the time she was infant and that she did not go back to her mother. She denies a suggestion that they exercised coercion on Rukhminamma to execute Ex.B.69. In her cross-examination, she states that since the Will is not strong and for immediate enjoyment, the gift deeds were executed. She reiterates that Rukhminamma gifted the property to her and DW.1 voluntarily. She denies a suggestion that the documents were not executed voluntarily.

The other witness, DWs.4 & 5 were examined to prove the fact that Rukhminamma fostered defendants 1 & 2 and that defendants 1 & 2 resided with Rukhminamma. To the similar effect is the deposition of DW.6.

DW.7 is a witness, who is the son of one Sri A. Subba Rao, who is the scribe/attestor of Exs.B.70/B.71. This witness identifies the signatures of his father on these two documents. DW.8, who is a vegetable vendor, deposes that defendants 1 & 2 were living with Rukhminamma.

DW.9 is a Doctor, who issued Ex.B.38-medical certificate, which shows that Rukhminamma died due to congestive heart failure. But, he admits that he does not have her past medical record. He admits that DW.1 brought up the patient to the hospital. The learned counsel pointed out that no cross-examination is there to this witness about the mental faculties of Rukhminamma.

DW.10 is another attestor of Ex.B.71. He states that he along with A. Subba Rao attested the gift deeds which were scribed by U. Ramakrishna Rao. He admits that Rukhminamma brought up defendants 1 & 2 and adopted them. He states the contents were read over to her also. In the cross-examination he states that Rukhminamma used to attend all the works personally and normally she would go to Bazaar and get the necessary articles. He deposed that from their childhood, defendants 1 & 2 were brought up by Rukhminamma herself. He clearly admits that she was aware

of the contents of Ex.B.71 and denied a suggestion that there was coercion and fraud in execution of Ex.B.71.

The next witness, DW.11 is one A. Mallikarjuna Rao, who was a neighbour. He deposed that he was present at the time of execution of the Will and saw the attestors and the attestors attested the Will in 1980.

The learned counsel for the appellants/plaintiffs however vehemently argues that there were unnatural circumstances which were not explained in this case. According to him; a) once Ex.B.69-Will was executed by Smt. Rukhminamma, there was no need of necessity for her to execute two gift deeds subsequently. He argues that this is not satisfactorily explained; b) he also argues that the contents of the Will are not proved and the attestors were not examined; c) he also argues that the gift deeds were not 'acted upon' even if they were true and Rukhminama continued to enjoy the property as owner thereto. He strongly urges that there is no delivery of possession and that unless the delivery of possession is followed the gift, it cannot be presumed that the gifts are valid. He relied upon two judgments of the Hon'ble Supreme Court of India reported in ***Baby Ammal v. Rajan Asari***³ and ***Naramadaben Maganial Thakker v. Pranjivandas Maganial Thakker***⁴ to argue that there is no acceptance of the gift to prove that the gift deeds are accepted. This was the alternative submission made by the

³ (1997) 2 SCC 636

⁴ (1997) 2 SCC 255

learned counsel who still argued that gift deeds are not validly executed.

In reply to this, the learned counsel for the respondents/defendants argues (basing on the oral evidence) that in order to ensure that there was smooth transition the gift deeds were executed in continuation of the Will. This was done according to the learned counsel to ensure that there was immediate transfer of property. The learned counsel also points out that there was no whisper in the evidence of the witnesses about the coercion and confinement. He also argues that the averments made in para-13 of the plaint are not borne out by evidence. He argues that neither the confidence trick, fraudulent misrepresentation, long-drawn conspiracy, undue influence and wrongful restraint are proved. He points out that each of the allegations should have been proved; b) the existence of conspiracy or exercise of his influence and wrongful restraint are not borne out by the record or by the evidence. He argues that fraud, coercion etc., can reopen the most solemn acts and so the quality of evidence in proof of fraud etc. should be very high.

The learned counsel for the respondents/defendants also points out to Ex.B.36, which is an application filed by Rukhminamma before the income tax authorities seeking permission under Section 230 (A) of the Income Tax Act to transfer by gift the properties to defendants 1 & 2. He argues that the filing of these papers signed by Rukhminamma and

the execution of Exs.B.70 & B.71 gift deeds in June, 1983 and October, 1983 shows that Smt. Rukhminamma was conscious of what she was doing. The learned counsel argued that if there was coercion and undue influence and Rukhminamma was not conscious of what she was doing, the defendants would have got both the documents executed on the same day or simultaneously. The fact that the documents were executed by following due process of law and with a time gap of four months clearly shows that they were voluntarily executed. As far as possession of the property is concerned, the learned counsel points out that the documents filed including Ex.B.23 which shows that the property gifted to 1st defendant was mutated in her name in the municipal records, after deleting the name of Rukhminamma in 1986. He also points out that Ex.B.50 is a caveat filed by M.S. Murthy who examined as DW.5. This caveat was filed in 1988 and it clearly shows that he is paying rents to Rukhminamma and after her death, he was paying rents to Ramadevi, who is the respondent in the caveat and also 1st defendant in the suit. The learned counsel for the respondents/defendants points out that the caveator deposed as PW.5 in the suit on behalf of the plaintiffs. This caveat itself shows that he recognized the title of Ramadevi. Ex.B.51 is the certified copy of the order passed by the Rent Controller under which the eviction was ordered in RCC No.81 of 1987 filed against the 6th defendant in the suit. The tax paid receipts were also filed as Exs.B.44

and B.45. The learned counsel also relies upon the contents of gift deeds, which clearly show that the property has been delivered and taken over by the respective donees. Similarly, the learned counsel relies upon the tax receipts which are marked as Exs.B.13 & B.14 to show that defendants 1 & 2 have been paying the house tax for property gifted to them, vide Exs.B.70 & 71. He also relies upon photographs and negatives filed and marked as Exs.B.1 & 2 as also Exs.B.15 & 16 to show that defendants 1 & 2 were part of the family of Smt. Rukhminamma.

Basing on all these documents including the conduct of the parties subsequent to Exs.B.70 and 71, the learned counsel argues that possession of the property was taken over as is visible from the payment of taxes and the cases that were filed for eviction of the tenants. The caveat filed by the witness examined by the plaintiffs (PW.5) itself clearly shows that after the death of Rukhminamma, the first defendant was treated as the owner. Therefore, the learned counsel argues that there is enough documentary evidence to prove the acceptance of gift deeds by the defendants.

This Court on an examination of the entire evidence on record comes to the conclusion that a) the plaintiffs had a heavy burden on them to prove the elements of fraud, misrepresentaiton, wrongful restraint etc., but absolutely no evidence is forthcoming on these critical aspects to prove that

defendants 1 to 4 exercised any undue influence etc. over Rukhminamma from the execution of Exs.B.70 & 71, b) the photographs filed, correspondence and other documents filed go to show that defendants 1 & 2 were close to Rukhminamma and that they were living with her. Although an adoption in the strict sense of term by fulfilling the formalities in adoption are not proved, the facts remains here that defendants 1 & 2 were brought up by Rukhminamma and they grew up in her care and custody; c) there is a presumption under law that a registered document is validly executed. Exs.B.70 and 71 were executed and registered with a gap of three months between them and permission from Income Tax Department was also obtained. There is also a presumption that all official acts were done properly. Neither of these presumptions was rebutted in this case. The onus was on the person challenging this document. Para-27 of the judgment in **Prem Singh v. Birbal**⁵ is very relevant here; and d) the proximity of defendants 1 & 2 to Rukhminamma is also a strong factor to show that she gifted the properities to defendants 1 & 2 even though they belonged to a totally different caste. The plaintiffs could not prove that they were looking after and taking care of Rukhminamma.

In those circumstances, this Court is of the opinion that the defendants by the documentary and other evidence were able to show that they were living with Rukhminamma and that out of love and affection, she executed Exs.B.70 & 71

⁵ (2006) 5 SCC 353

gift deeds. No evidence to the contrary particularly supporting the case pleaded was introduced by the plaintiffs. This Court therefore believes that Exs.B.70 & 71 gift deeds were willingly and voluntarily executed by Rukhminamma. Even if the evidence required to prove that Ex.B.69-Will is not there, Exs.B.70 and 71 resulted in an immediate transfer of the property to defendants 1 & 2.

The evidence on record shows that the gift deed was accepted by defendants 1 & 2. The mutation of the names, the legal proceedings, payment of taxes show that defendants 1 & 2 acted upon the gift deeds after accepting the same. Otherwise also, this Court notices a judgment of the Hon'ble Supreme Court of India reported in **Renikuntla Rajamma v. K. Sarwanamma**⁶ wherein after an analysis of the relevant sections of the Transfer of Property Act, their Lordships came to a conclusion that formal acceptance of the property or delivery of possession is not necessary for the validity of a gift deed. This case was decided by three Hon'ble Judges to resolve a conflict of view on this issue of acceptance of a gift. In view of the latest pronouncement of the Hon'ble Supreme Court, this Court holds that acceptance of a gift is not really a pre-requisite for upholding the validity of the gift deeds. Even otherwise in the case on hand, there is adequate evidence to show that the acceptance of the gift by defendants 1 & 2.

⁶ (2014) 9 SCC 445

This Court holds that for all the reasons mentioned above, the findings of the lower Court are correct. The plaintiffs therefore are not entitled to any declaration as sought for and consequently issue Nos. 1 to 3 are held against the plaintiffs and in favour of the defendants.

Issue No.4 is for rent and mesne profits. As issue Nos.1 to 3 were held against the plaintiffs, the question of mesne profits and rents does not arise.

As far as issue No.5 with regard to limitation is concerned, no arguments were advanced in this Court also. About the same, this Court also concurs with the findings of the lower Court that except for taking a formal plea in the written statement, no evidence or documents were advanced. The lower Court also noticed that Rukhminamma died in 1985 and the suit was filed in 1986. Hence, the suit is in time. On issue No.5, the Court held that the court fee paid is not adequate. But, in the appeal, the court fee was paid separately as can be seen from item No.3 of the valuation para. In the details of the valuation for a sum of Rs.2,280/- was paid as difference amount. Hence, nothing really survives for consideration on this issue.

For all the above reasons, this Court holds that the impugned judgment of the lower Court is correct in all respects and there are no infirmities in it.

In the result, the First Appeal is dismissed. The judgment and decree dated 06.04.1998 passed in O.S.No.403 of 1986 by the III Additional Senior Civil Judge, Vijayawada, is confirmed. In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 27.04.2018
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