



AS.No.33/2012

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N.MALA

AS.No.33/2012

G.Devarajan

.. Appellant /
1st Defendant

Vs.

1.C.Venkata Swamy

2.S.Srinivasan

.. RR 1 & 2
/ Plaintiffs 2&3

3.The Sub Registrar
Periamet, Chennai.

.. R3 / 2nd
Defendant

Prayer:- Appeal Suit filed under Section 96 of CPC against the judgment and decree dated 01.08.2011 passed in OS.No.11063/2010 on the file of the learned Additional District Judge, III Fast Track Court, Chennai.

For Appellant	:	M/s.R.V.Rukmani
For RR 1 & 2	:	Mr.S.M.Deenadayalan
For R3	:	No appearance



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JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1) The 1st defendant in the suit in OS.No.11063/2010 on the file of the Additional District Court [Fast Track Court-III], Chennai, is the appellant in the above appeal.
- (2) The suit in OS.No.11063/2010 is filed by one Tmt.T.G.Ranganayakiammal, wife of late Thiru.T.K.Govindarajulu Naidu [hereinafter referred to as Thiru.TKG] for a declaration that the Settlement Deed dated 15.07.2002 executed by Thiru.TKG in favour of the defendants registered as Document No.1395/2002 before the Sub Registrar, Periamet/3rd respondent herein is illegal, void, sham and nominal and non-est in law and also for permanent injunction restraining the defendants from interfering with her peaceful possession and from registering any document pertaining to the suit property.
- (3) Brief facts that are necessary for the disposal of this Appeal are as follows.



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(4) It is not in dispute that the suit property namely an extent of 1221 sq.ft., comprised in S.No.212, in Chindadripet with a building bearing Door No.38 in Balakrishna Pillai Street, Chindadripet, is the absolute property of the husband of the plaintiff by name Thiru.TKG. It is also not in dispute that the plaintiff is the wife of late Thiru.TKG. The suit property was purchased by the mother of Thiru.TKG by a registered Sale Deed dated 17.08.1961 and the same was inherited by Thiru.TKG after the death of his mother on 18.07.1964.

(5) It is the case of the plaintiff that she and her husband late Thiru.TKG were staying alone and they had no issues. It is the specific case of the plaintiff that by frequently visiting the house, the appellant/1st defendant gained sufficient influence over late Thiru.TKG and made Thiru.TKG to execute a registered Settlement Deed dated 15.07.2002 as Doc.No.1395/2002 in favour of the appellant herein/1st defendant by undue influence. It is also the case of the plaintiff that the 1st defendant was never the adopted or foster son of Thiru.TKG as claimed by the 1st defendant. It is



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admitted that Thiru.TKG died on 24.11.2005 without any Will as far as the suit property is concerned.

- (6) In the plaint, it is also alleged that Thiru.TKG never informed her about any Settlement Deed executed in favour of the 1st defendant and therefore, the plaintiff also pleaded that the 1st defendant himself had fraudulently fabricated the document taking advantage of the fact that Thiru.TKG was very old, infirm and unstable for a few years before his death. Stating that the plaintiff had cordial relationship with her husband throughout their lifetime after the marriage, it is contended by the plaintiff that the Settlement Deed is unfair and could not have been executed by her husband in favour of the appellant/1st defendant who is a stranger. In short, the allegations are to the effect that the Settlement Deed is vitiated by fraud, coercion and undue influence. The plaintiff also contended that the Settlement Deed was never acted upon as it was never intended by late Thiru.TKG.

- (7) The said suit was contested by the appellant/1st defendant by filing a written statement. It was contended by the appellant that the



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Settlement Deed in favour of the appellant was executed by late Thiru.TKG and Thiru.TKG himself came to the Registrar Office in person for that purpose. Even though the appellant admitted that there was no adoption ceremony, it is contended that the appellant was treated by Thiru.TKG as his foster son all along as he was taking care of the daily needs of Thiru.TKG and meeting their medical expenses of the old couple. In short, it is the specific case of the appellant/1st defendant that the settlor and his wife were under his care and custody till the settlor died on 24.11.2005. It is in the stated circumstances, the appellant pleaded that Thiru.TKG executed the Settlement Deed on his own volition without any influence. The appellant specifically denied the allegations of coercion, fraud and undue influence and submitted that the Settlement Deed was fair in the sense that the settlor has given life estate to the plaintiff to protect her interest till her life time and gave the vested right only after the life time of both Thiru.TKG as well as his wife/plaintiff.



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(8) During the pendency of the suit, the plaintiff Tmt.T.G.Ranganayaki Ammal died and Tvl.Venakata Swamy and Srinivasan, were brought on records as LR's of the deceased plaintiff Ranganayaki Ammal.

(9) The Trial Court framed the following issues:-

(a) *Whether the Settlement Deed dated 15.07.2002 executed by the husband of the plaintiff in favour of the first defendant is valid and binding on the plaintiff?*

(b) *Whether the Settlement Deed dated 15.07.2002 was contrary to the provisions of the Hindu Adoption and Maintenance Act, 1956 and the provisions of the Indian Stamp Act in the light of the admitted claim of the 1st defendant that he was only a foster son and not an adopted son?*

(c) *Whether a Foster son can be accorded the same status as that of an adopted son under the Hindu Law?*

(d) *Whether the settlement was brought forth by undue influence, coercion and fraud?*



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- (e) *Whether the plaintiff is entitled to a declaration that the Settlement Deed is illegal, void, sham, nominal and non-est in law?*
- (f) *Whether the plaintiff is entitled to injunctions as prayed for?*
- (g) *To what other relief, the pl is entitled to, if any?*
- (10) Taking note of the fact that the Settlement Deed was attested only by the wife of the appellant and various attending circumstances, particularly the fact that the Settlement Deed was typed in English, but signed by Thiru.TKG in Tamil, the Trial Court after finding that there was no explanation from the appellant, held that the appellant has not proved that the document-Settlement Deed which was marked as Ex.B1 was executed by Thiru.TKG, knowing the contents in the document. Since the appellant has not produced any independent evidence to support his case that he was taking care of Thiru.TKG and his wife as a foster son and about his own credentials pleaded in the written statement, the Trial Court held that the document-Ex.B1 was brought forth by undue influence.
- (11) In view of the specific findings on the nature of settlement on issues 1, 4 and 5 against defendant, the Trial Court accepted the



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case of the plaintiff and ultimately held that the plaintiff is entitled to the declaration that the Settlement Deed is void and non-est in law.

- (12) One of the issues framed by the Trial Court was whether the Settlement Deed was contrary to the provisions of the Hindu Adoption and Maintenance Act, 1956 and the provisions of the Indian Stamp Act. Even though the issue is not necessary, the Trial Court discussed in detail the facts and held that the defendant has not proved by evidence, the relationship he had with the settlor and the plaintiff.
- (13) The Trial Court further held on the third issue that a foster son can get the status of adopted son only if he proves that was treated as a foster son and the Trial Court further held that the appellant had neither proved that he is an adopted son nor a foster son. The Trial Court made this observation ignoring that a foster son can never enjoy the status of adopted son. The Trial Court also found that the plaintiff was in possession of the suit property and that the document-Ex.B1 being declared as void and invalid and held that



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the plaintiff is entitled to the prayer of injunction as prayed for.

During the pendency of the suit, the plaintiff died. Hence, the legal representatives, namely, respondents 1 and 2, were brought on record as plaintiffs. Since the plaintiff had executed a Will, it is held that they are entitled to the suit property upon proof of the Will before the appropriate Forum. Aggrieved by the judgment and decree of the Trial Court, the above appeal is preferred by the 1st defendant in the suit.

- (14) The learned counsel appearing for the appellant vehemently argued that the findings of the Trial Court are erroneous and unsustainable and the Trial Court has not considered the well settled principles on the question of burden of proof. It is contended by the learned counsel that the Settlement Deed dated 15.07.2002 under Ex.B1 was executed without any undue influence, fraud or misrepresentation and the plaintiff did not question the Settlement Deed even though the settlor namely, Thiru.TKG was alive for more than 3 years after the execution of Ex.B1-Settlement Deed. It is contended that the Trial Court failed to consider the evidence in



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proper perspective particularly the fact the appellant performed the last rites of Thiru.TKG upon his death and was always treated as his foster son throughout. When the plaintiff herself admit in the plaint that the last rights of Thiru.TKG was performed by the appellant, it is contended by the learned counsel for the appellant that the Trial Court ought to have concluded that the Settlement Deed is quite natural and that it is not vitiated by fraud or coercion or undue influence.

(15) Pointing out that there is no cogent evidence to prove undue influence, learned counsel for the appellant relied upon several judgments of the Hon'ble Supreme Court as well as this Court to sustain her legal argument that the plea of undue influence is not established by the plaintiff by adducing proper evidence. Since burden of proof was wrongly shifted on the appellant, the learned counsel submitted that the judgment of the Trial Court is vitiated.

(16) On the other hand, the learned counsel for the respondents/plaintiffs relied upon his written arguments submitted on behalf of the plaintiffs before the Trial Court and submitted that



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the findings of the Trial Court are supported by reasons. He also relied upon a few judgments of the Hon'ble Supreme Court to sustain the findings and to oppose the plea that Ex.B1 is not vitiated by undue influence.

- (17) This Court considering the overall pleadings and evidence has considered the following aspects of the case as borne out from records.
- (18) The plaintiff is the wife and only legal heir of the deceased Thiru.TKG and they were living together in the same property which is covered under the document – Ex.B1 [Settlement Deed]. In the course of evidence, the appellant admitted that he is not a relative of Thiru.TKG. It is seen that there is no evidence adduced on behalf of the appellant to prove the manner in which the appellant had developed acquaintance with the family particularly with Thiru.TKG. Therefore, the fact that the appellant is an utter stranger to the family is not in dispute. The Settlement Deed which is marked as Ex.B1 though reads as if the appellant is the foster son of the settlor, no evidence is adduced to indicate that the settlor had



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ever treated the appellant as his foster son or he had great love and affection towards the appellant and desirous of making settlement in his favour in respect of his valuable property. Though it is contended that the Settlement Deed would come into effect after the life time of the settlor as well as the plaintiff, there is no reason why the settlor should exclude her beloved wife so that other heirs of his wife will inherit the property. From the reading of the entire evidence, this Court is unable to find any special reason for the deceased Thiru.TKG to exclude all the heirs or to prefer the appellant to anyone in the family who are close relatives.

- (19) The appellant examined himself as DW1. On reading of the proof affidavit filed by the appellant, the appellant has denied the averments in the plaint parawise. However, he has not stated anything with regard to the relationship he had with Thiru.TKG and how he could gain acquaintance with Thiru.TKG. Strangely, he has not produced any document or examined any independent evidence to show that the appellant was treated as the foster son of Thiru.TKG. Neither any independent witness was examined nor



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any document was produced to prove the contention of the appellant that he was spending for the daily needs of Thiru.TKG or took care of the medical expenses of Thiru.TKG till his death. Though the document was executed in the year 2002, the appellant has not produced any document or examined any witness to indicate that the plaintiff had knowledge about the Settlement Deed. During cross-examination, the appellant admits that he has no document to prove his contention that 80th birth anniversary was celebrated at the expenses of the appellant and that it was the appellant who performed the last rites of Thiru.TKG in his capacity as foster son or as per wishes of settlor and his wife.

- (20) The document Ex.B1 was typed in English. However, the executor namely Thiru.TKG signed the documents in Tamil. It is not the case of the appellant that Thiru.TKG was well versed in English and no specific reason was given as to why the document was typed in English. It appears that the advocate who has prepared the document is not well versed with Tamil to prepare document and hence, it is drafted in English. Even the appellant was not even in



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a position to affirm whether the document was executed by Thiru.TKG after consulting his wife, namely the plaintiff. The appellant who claims to be the foster son of Thiru.TKG, during his evidence has admitted that he does not know anything about the family of Thiru.TKG or the plaintiff. Therefore, the evidence of the DW1/appellant would amply establish the fact that Thiru.TKG had no reason to treat the appellant as his foster son and to execute a Settlement Deed in respect of a very valuable property of Thiru.TKG without any influence.

- (21) The plaintiff has specifically pleaded fraud and undue influence in the plaint. Learned counsel appearing for the appellant relied upon a judgment of the Hon'ble Supreme Court in ***Afsan Sheikh and Another Vs. Soleman Bibi and Others*** reported in **1976 [2] SCC 142** wherein, it is held as follows:-

"14. The specific case set up in the plaint was that the hiba-bil-ewaz in question was vitiated by fraud and misrepresentation practised by Afsar defendant. It was in that context it was stated in a general way that the plaintiff was a simple, illiterate man of 90 years, and had great confidence in Afsar, and "the parties used to help each other in respective cultivation". Apart from this general and nebulous



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allegation, no particulars of a plea of undue influence were pleaded. Even the near relationship between the plaintiff and Afsar was not disclosed. It was not particularised how Afsar was in a position to dominate the will of the plaintiff, in what manner he exercised that influence, how the influence, if any, used by Afsar over him was “undue”, and how and in what circumstances the hiba-bil-ewaz was an “unfair” or unconscionable transaction. In short, no material particulars showing that the transaction was vitiated by undue influence were pleaded. Rather, somewhat inconsistently with a plea of undue influence, it was alleged that the hiba was tainted by fraud, misrepresentation and deceit practised by Afsar.

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 Code of Civil Procedure, required to be separately pleaded, with specificity, particularity and precision. A general allegation in the plaint, that the plaintiff was a simple old man of ninety who had reposed great confidence in the defendant, was much too insufficient to amount



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to an averment of undue influence of which the High Court could take notice, particularly when no issue was claimed and no contention was raised on that point at any stage in the trial court, or, in the first round, even before the first appellate court.

16. The High Court has tried to spell out a plea of undue influence by referring to para 7 of the written statement in which the defendant inter alia stated that he was looked after and brought up by the plaintiff as his son and he became very much attached to the plaintiff and since his infancy till the middle of this year this defendant always lived with the plaintiff and used to treat him as his father, helped him and looked after all his affairs. This paragraph, according to the learned Judge, contains a clear admission of the intimate relationship between the two indicative of the position of dominating the will of the plaintiff by Defendant 1.

17. We are, with due respect, unable to appreciate this antic construction put on the defendant's pleading. All that has been said in the written statement is that the relationship subsisting



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between the plaintiff and the defendant was marked by love and affection, and was akin to that of father and son. Normally, in such paternal relationship, the father, and not the son, is in a position of dominating influence. The defendants' pleading could not be reasonably construed as an admission, direct or inferential, of the fact that he was in a position to dominate the will of the plaintiff. In spelling out a plea of undue influence for the plaintiff by an “inverted” construction of the defendants' pleading, the High Court overlooked the principle conveyed by the maxim secundum allegata et probata, that the plaintiff could succeed only by what he had alleged and proved. He could not be allowed to travel beyond what was pleaded by him and put in issue. On his failure to prove his case as alleged, the court could not conjure up a new case for him by stretching his pleading and reading into it something which was not there, nor in issue, with the aid of an extraneous document. Thus considered, the High Court was in error when by its judgment, dated October 16, 1963, it remanded the case to the first appellate court with a direction to determine the question of undue influence “on material, already on record”.



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- (22) Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Raja Ram Vs. Jai Prakash Singh and Others*** reported in ***2019 [8] SCC 701***, wherein it is held that in cases of fraud, undue influence and coercion, full particulars must be set forth in pleadings and vague or general plea can never serve this purpose. It is also held that party pleading must be required to plead precise nature of influence exercised, manner of use of influence. It is also reiterated that onus would shift on to defendant only after plaintiff establishes a prima facie case. In this case, the brother of plaintiff got a Sale Deed from father and the sale was challenged on the ground of undue influence. The Hon'ble Supreme Court observed that the pleading is not sufficient to satisfy the requirements and that the initial burden is discharged.
- (23) The learned counsel further relied upon a judgment of the Bombay High Court in the case of ***Shrimati and Others Vs. Sudhakar R.Bhatkar and Others***, reported in ***AIR 1988 Bom 122***, it is seen that the Court has specifically pointed out that when the transaction appears to be unconscionable, the burden of proving otherwise is



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on the beneficiary of transaction. All the three judgments are distinguishable on facts. In this case, there is specific pleading that the plaintiff an utter stranger to the family, gained acquaintance with the settlor and it is admitted by the 1st defendant that he was helping the settlor in domestic needs. When the settlement is an unnatural disposition, the burden lies on the 1st defendant/appellant and he has failed to discharge his burden as found by this Court..

- (24) The term 'undue influence' is defined under Section 16 of Indian Contract Act, 1872. Section 16 reads as under:-

"16:-“Undue influence” defined.—(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



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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.

- (25) A consenting party to a transaction or a person claiming under him may challenge the transaction if consent was not free because he was exposed to some influence from the other party. When a plea of undue influence is raised, two ingredients are to be satisfied. Firstly, to show that the relationship between the donor and the donee was such that the donee was in a position to dominate the Will of the donor and secondly, to show that the donee used his position to obtain an unfair advantage over the donor. Sub-section [2] of Section 16 gives the test to derive whether a person was in a position to dominate the will of another. Where a person holds a



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real or apparent authority over the other or where he stand in a fiduciary relation to the other or where the person makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of his age, illness or mental or bodily distress, the Court can presume that one was in a position to dominate the will of another. In a case where it is shown that a person who is in a position to dominate the will of another enters into a contract with the other 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 be upon the person who is in the position to dominate the will of other.

- (26) The possibility or probability of one party dominating the will of the other may arise from the nature of relationship or even from a helplessness or disability of the other party. In this case, the appellant who is a stranger gain acquaintance with the husband of plaintiff and the written statement clearly shows how the appellant was attending to the daily needs. Even in the written statement, the



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appellant admits the settlor died due to brain tumour. From all the facts and attending circumstances, this Court has no hesitation to hold that the appellant was in a position to dominate the will of settlor. Now, an unfair advantage by getting a Settlement Deed in respect of a valuable property in Chennai is admitted. Therefore, the exercise of undue influence can be presumed in view of the unconscionable and an unfair transaction. The settlor executed the Settlement Deed in favour of a stranger in preference to many of his relatives. Section 16[3] prescribes a statutory presumption. Hence, the burden lies on the appellant to rebut the presumption by showing that the settlor had independent advice. In this case, the plaintiff who is the wife has pleaded that she was not informed by the settlor before or after settlement. Though the appellant has pleaded that the plaintiff was very much present when the Settlement Deed was executed and she accompanied her husband to the Registrar's office, no independent witness was examined to prove his case. The appellant though was in a position to rebut the presumption, he has miserably failed. Hence, this Court is unable



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(27) Hence, the Appeal Suit fails and the same is **dismissed** and the judgment and decree dated 01.08.2011 passed in OS.No.11063/2010 on the file of the learned Additional District Judge, III Fast Track Court, Chennai, is confirmed. No costs.

[SSSRJ] [NMJ]
02.11.2022

AP
Internet : Yes

To

1.The Additional District Judge,
III Fast Track Court, Chennai

2.The Section Officer
VR Section, High Court,
Chennai.



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S.S.SUNDAR, J.,

AND

N.MALA, J.,

AP

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