

Dr. Miss Annie M. Pichamuthu and Another

Vs

Dr. Mrs. Bessie Thangam Selvaraj and Another

Civil Appeal No. 1740 of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

09.01.1979

JUDGMENT

CHINNAPPA REDDY, J. -

1. Late Dr. Arulmani purchased a house in Madurai on January 24, 1908. One of her sisters, Kamalam James, lived with her in that house from 1928 to 1948. The relations between Dr. Arulmani and Kamalam James became strained and the latter had ultimately to leave the house. Thereafter, Dr. Bessie Thangam Selvaraj (first defendant), the daughter of another sister of Dr. Arulmani started paying her frequent visits. Dr. Bessie also used to give some money now and then to Dr. Arulmani. On March 19, 1952 Dr. Arulmani executed a will in favour of Bessie revoking an earlier will which she had executed in favour of her uterine sister Dr. Annie Pichamuthu (first plaintiff). A few months afterwards, on January 20, 1953, Dr. Arulmani executed a deed of settlement in favour of the first defendant. The first plaintiff who was working elsewhere returned to Madurai and learnt about the execution of the deed of settlement towards the end of March 1953. On April 2, 1953, Arulmani purported to revoke the deed of settlement by a revocation deed Ex. A-3. A few days later, on April 13, 1953, Arulmani executed an agreement of sale in favour of her two uterine sisters (plaintiffs) and two half-sisters. Towards the end of May 1953, Arulmani fell ill. Again the first defendant started taking care of her. On May 26, 1953, Arulmani executed two documents Exs. A-8 and A-9. By Ex. A-8 she purported to cancel the agreement of sale executed by her in favour of her sisters and half-sisters on April 13, 1953. By Ex. A-9 she purported to cancel the deed of revocation executed by her on April 2, 1953. Arulmani again fell ill in January 1954 and in March 1954, the first plaintiff took her with her to Trichinopoly for treatment. At Trichinopoly Arulmani executed Ex. A-12, a deed of sale in favour of her two sisters and two half-sisters. When the first plaintiff attempted to take possession of the house she was resisted by the second defendant, the tenant in possession. After obtaining a deed of release from the two half-sisters, the two plaintiffs, the sisters of Arulmani, filed the suit out of which this appeal arises on January 16, 1956 for a declaration that the deed of settlement dated January 20, 1953 was invalid and for recovery of possession of the house together with profits. Arulmani died on May 19, 1956.

2. The plaintiffs alleged that the settlement deed was obtained by the firsts defendant from Arulmani by misrepresentation and undue influence. The trial Judge held that the settlement deed was vitiated by undue influence and decreed the suit. On appeal by the first defendant the High Court of Madras held that merely because the first defendant was helping Arulmani by giving small loans and was also visiting her frequently, attending to her personal comforts, it did not follow that Arulmani was the victim of any undue influence. On the other hand it was held by the High Court that Arulmani was a strong willed person who could not be easily influenced by anyone. The appeal was allowed and the suit was dismissed.

3. In this appeal, Shri Vepa P. Sarathi, learned counsel for the plaintiffs-appellants argued that though there was no direct evidence of any undue influence, the circumstances of the case clearly established that the first defendant managed to obtain a deed of settlement in her favour by exercising undue influence over Arulmani. The circumstances pointed out by him were the impecunious condition of Arulmani, the frequent visits paid by the first defendant to her at that time, the small amounts that the first defendant used to give Arulmani and the show of affection made by the defendant. According to Shri Sarathi the first defendant must have also misrepresented to Arulmani that she would take care of her for the rest of her lifetime if she settled the properties on her.

4. We are unable to agree with the submission of Shri Vepa P. Sarathi. It is true that Dr. Arulmani was old and impecunious. Her niece, the first defendant, befriended her, visited her frequently, took care of her personal comforts and even gave her small amounts of money. There is no evidence to lead us to the conclusion that everything that was done by the first defendant was nothing but a pretence. For the purposes of this appeal we may even assume that the actions of first defendant were motivated and that the display of affection was a mere show. Even so it is difficult to conclude, in the absence of better or other evidence, that there was any undue influence or misrepresentation. It is clear from the evidence and it has been so found by the High Court that Arulmani was a woman of character and strong will. She was to likely to have been the victim of any undue influence or misrepresentation. More likely, she executed the deed of settlement out of a genuine sense of gratitude towards her niece who had befriended her in time of need and taken care of her. It is to be noticed here that after Arulmani revoked the deed of settlement after the first plaintiff rushed to the scene, the revocation of the deed of settlement was followed very soon thereafter by an agreement of sale in favour of the plaintiffs and the two half-sisters. The execution of the agreement of sale so soon after the deed of revocation would lead anyone to suspect that the deed of revocation itself was the result of pressure applied on Arulmani by her sisters and half-sisters. It is unnecessary for us to dilate further on this question. It is sufficient to say that there is no evidence of undue influence or misrepresentation and the deed of the settlement cannot be set aside on this ground. In the result the appeal is dismissed with costs.

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