

# RAJASTHAN HIGH COURT

Munna Kumari

Vs.

Umrao Devi

S.B. Civil Second Appeal No. 98 of 1990

(Shiv Kumar Sharma, J.)

20.12.2005

## JUDGMENT

**Shiv Kumar Sharma, J.**

1. Suit instituted by Kapoor Chand Jain (since deceased) against Sugan Chand Jain and Munna Kumari for declaration as null and void the gift deed dated September 9, 1959 executed by Sugan Chand Jain in favour of Munna Kumari was dismissed by the learned trial court on May 22, 1973. Civil Regular First Appeal preferred by the plaintiff against the decree of the learned trial court was allowed on March 7, 1990 by the learned First Appellate Court reversing the findings of the trial court and holding that although the gifted property was self-acquired property of Sugan Chand Jain, the gift deed was executed by him under the undue influence, therefore, it deserved to be declared as null and void. The defendant Munna Kumari in the instant second appeal has assailed the findings of learned First Appellate Court.

2. At the time of admission of instant appeal following substantial questions of law were formulated:

- (i) Whether the learned First Appellate Court has set aside the findings of the learned trial court without assigning any good reason and by ignoring the evidence produced by the appellant?
- (ii) Whether the judgment of the learned First Appellate court is liable to be set aside on the ground that finding is perverse?

3. As per the facts averred in the plaint, Sugan Chand had adopted Kapoor Chand on April 25, 1994 and adoption deed was executed on January 27, 1947. On the date of adoption Sugan Chand and Kapoor Chand both had joint possession over the suit property. One Smt. Nangi w/o Gulab Chand who had started living with Sugan Chand exercised undue influence over Sugan Chand and two years prior to his death when he

was sick, got one gift deed executed on September 9, 1959 in favor of Munna Kumari. Kapoor Chand came to know about the execution of gift deed on August 18, 1960 when father of Munna Kumari made attempt to dispose of the gifted property. Kapoor Chand therefore on September 6, 1960 instituted suit for declaration and permanent injunction against Sujan Chand and Munna Kumari for adjudging the gift deed as null and void and restraining Munna Kumari from alienating the gifted property. During the pendency of suit defendant Sujan Chand expired and the suit was contested by Munna Kumari by filing written statement wherein she disputed the factum of adoption. She pleaded that the gifted property was the self-acquired property of Sujan Chand and at the time of execution of gift deed no undue influence was exercised by Smt. Nangi over Sujan Chand. Munna Kumari was brought up by Sujan Chand from her childhood and gift deed was executed in her favour by Sujan Chand because of natural love and affection. This fact was also denied that Kapoor Chand had ever lived with Sujan Chand in the gifted property. A few days prior to death of Sujan Chand, it was Munna Kumari who permitted Kapoor Chand to live in a room, kothari and kitchen and when she asked him to vacate the premises, Kapoor Chand had filed the suit with false averments. As many as eight issues were framed out of the pleadings of the parties. The trial court after a detailed consideration of oral and documentary evidence adduced by the parties, held that Kapoor Chand failed to establish that he was ever adopted by Sujan Chand. It was also held that the gifted property was self-acquired property of Sujan Chand. The suit instituted by Kapoor Chand was, therefore, dismissed on May 22, 1973.

4. Kapoor Chand preferred regular first appeal against the findings of trial court. During the pendency of appeal Kapoor Chand died and his legal representatives were brought on record. Learned First Appellate Court allowed the appeal and decreed the suit of plaintiff by declaring the gift deed null and void vide decree and judgment dated March 7, 1990. Hence, this second appeal.

5. I have heard learned counsel for the parties and perused the record.

6. The reasons on the basis of which issue No. 1 in regard to factum of adoption was decided against plaintiff Kapoor Chand by the learned trial court may be summarized as under:

- (i) Ceremony of adoption was allegedly performed on April 25, 1949 whereas adoption deed Ex.2 was executed on January 27, 1947.
- (ii) Sunder Lal, the natural father of Kapoor Chand, did not put his signatures on adoption deed.
- (iii) Kapoor Chand in his deposition admitted that after adoption he did not reside with Sujan Chand.

(iv) In his statement Ex.A/2 recorded in a criminal case and in the charge Ex.A/3. Kapoor Chand accepted Sunder Lal as his father.

(v) Even in his service record, Kapoor Chand had shown Sunder Lal as his father.

7. Issue No. 2 was also decided against plaintiff Kapoor Chand by the trial court and it was held that the gifted property was self-acquired property of Sugan Chand.

8. While deciding the issue No. 3 against plaintiff Kapoor Chand, learned trial court held that no evidence was adduced by the plaintiff to establish that gift deed was executed by Sugan Chand due to undue influence of Nangi.

9. Learned appellate court reconsidered the evidence adduced by the parties and decided issue No. 1 in favour of plaintiff Kapoor Chand. The finding of trial court was reversed on the following grounds:

"(i) Affidavit Ex.3, was sworn in by Sugan Chand in support of adoption. Sugan Chand in the affidavit accepted that he had adopted Kapoor Chand. Jagdish Behari (PW.4) attested the affidavit and after the death of Sugan Chand the affidavit could be considered under Section 32 of the Evidence Act.

(ii) Nemi Chand (PW.2), Kapoor Chand (PW.6) and Bhura Mal (PW.7) were present at the time when the ceremony of adoption was performed. Testimony of these witnesses was wrongly disbelieved by the trial court.

(iii) Evidence of Phool Chand (PW.1) and Suraj Mal (PW.5) in regard to handing over Rupee and Coconut in temple was wrongly disbelieved by the trial court.

(iv) Name of natural father (Sunder Lal) was already mentioned in the adoption deed, therefore, if Sunder Lal did not put his signatures on the adoption deed, it hardly affected the genuineness of the deed.

(v) Jatan Mal who was the scribe of adoption deed had already died and Nemi Chand (PW.2), real brother of Jatan Mal, proved that adoption deed was in the handwriting of Jatan Mal.

(vi) If in the service record of Kapoor Chand, name of natural father was mentioned, it could not have affected the validity of adoption.

10. Having carefully analyzed the material on record, I find that the evidence of plaintiff in proof of the adoption is free from all suspicion of fraud and so consistent and probable as to give no occasion for doubting its truth. I, therefore, agree with the finding arrived at by learned first Appellate Court in regard to issue No. 1. In my

opinion learned trial court has not properly appreciated the ocular and documentary evidence adduced by the parties and finding arrived at by the trial court was rightly reversed by the first appellate Court.

11. That takes me to the finding in regard to issue No. 3 as to whether the gift deed was executed by Sugan Chand under undue influence of Nangi. Munna Kumari (DW.1) in her deposition stated that at the time of execution of gift deed she was minor and Sugan Chand did not put his signatures on the gift deed in her presence. Kesar Lal (DW.2) however deposed that he scribed the gift deed and at the time of execution of gift deed Sugan Chand was in good mental state. Bhanwar Lal (DW.8) father of Munna Kumari stated that since Munna Kumari was minor at the time of execution of gift deed, he took the possession of the gifted property from Sugan Chand in the capacity of guardian of Munna Kumari. Bhanwar Lal proved his signatures as well as the signatures of Sugan Chand. Learned Appellate Court also considered the statement of Kapoor Chand wherein he stated that Nangi was residing with Sugan Chand for the last 35 years and Nangi after exercising undue influence over Sugan Chand got the gift deed executed in favour of Munna Kumari. Kapoor Chand deposed that Nangi had affair with Bhanwar Lal also. Learned first appellate court also considered this aspect that Sugan Chand was sick and died after one year of the execution of gift deed. Considering the evidence adduced by both the parties, learned first appellate court held that because Sugan Chand was under the undue influence of Nangi and Kapoor Chand was not residing with him she got the gift deed executed by Sugan Chand in favor of Munna Kumari, daughter of Bhanwar Lal with whom also Nangi had affair.

12. Learned trial court as already noticed decided issue No. 3 against the plaintiff on the ground that the plaintiff did not adduce any evidence that Nangi exercised undue influence over Sugan Chand and got the gift deed executed in favour of Munna Kumari. In my opinion, the trial court while arriving at this conclusion did not properly consider the law as to undue influence. In *Afsar Sheikh s. Soleman Bibi*<sup>1</sup> the Apex Court indicated that 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 particularly 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.

13. In *Subhas Chandra Das Mushib v. Ganga Prosad Das Mushib*,<sup>2</sup> it was held that if the plea of undue influence is raised the court must scrutinise pleadings to find out that a plea has been made out and that full particulars thereof have been given before examining whether undue influence was exercised or not. In para 9 it was observed:-

The law in India as to undue influence as embodied in Section 16 of the Contract Act is based on the English Common law as noted in the judgment of this Court in *Ladli Prasad Jaiswal v. Karnal distillery Co. Ltd.*,<sup>3</sup> According to Halsbury's Laws of England (Third Edition Vol. 17 P. 673 Article 1298) "where there is no relationship shown to exist from which undue influence is presumed, that influence must be proved." Article 1299 P. 674 of the same volume shows that "there is no presumption of imposition or fraud merely because a donor is old or of weak character." The nature of relations from the existence of which undue influence is presumed is considered at pages 678 to 681 of the same volume. The learned author notes at Page 679 that "there is no presumption of undue influence in the case of gift to a son, grand son or son-in-law, although made during the donor's illness and a few days before his death". Generally speaking the relation of solicitor and client, trustee and *cesti que trust*, spiritual adviser and devotee, medical attendant and patient, parent and child are those in which such a presumption arises. Section 16(2) of the Contract Act shows that such a situation can arise wherever the donee stands in a fiduciary relationship to the donor or holds a real or apparent authority over him."

14. In *Naramdaben Maganlal Thakker v. Pranjivandas Maganlal Thakker*,<sup>4</sup> their Lordships of Supreme Court held that if the possession was not handed over the gift had become ineffective and inoperative and it was duly cancelled.

15. In *Musa Miya Walad Mohammad Shaffi v. Kadar Bax Walad Khaj Bax*,<sup>5</sup> it was held that if the donor keeps possession of the property with himself, the gift was not complete in the absence of delivery of possession or relinquishment of control over the property by the grandfather.

16. Bearing in mind the aforequoted principles if the evidence of the instant case is examined, it appears that the plaintiff has proved that relations between Sagan Chand and Nangi were such that one was in a position to dominate the will of the other. It is established from the evidence that Nangi created such circumstances that plaintiff Kapoor Chand had to leave the house of Sagan Chand who was at the mercy of Nangi being alone and sick. Bhanwar Lal (DW.8) with whom also Nangi had affair, was residing with his minor daughter Munna Kumari, in the house of Sagan Chand. The

plaintiff has established that influence exercised by Nangi in getting gift deed executed by Sagan Chand was undue. It has also been proved that the transaction was unconscionable. The burden of proof that gift deed was not executed under undue influence was on the defendant but she failed to discharge it. Even the possession of the gifted property was kept by Sagan Chand himself and he resided in it till his death. Statement of Bhanwar Lal that he took over the possession of gifted property on the behalf of his minor daughter, cannot be believed. In my opinion, the gift deed was executed under undue influence and the gift was incomplete, ineffective and inoperative. I am satisfied that learned Appellate Court has assigned good reasons in reversing the findings of learned trial court and no substantial question of law arises in this appeal. I find no substance in the submission of learned counsel for the appellant that have been canvassed in support of findings of learned trial court. In my opinion the judgment and decree of trial court do not stand to reasons.

17. As a result of the above discussion, I do not find any merit in the instant appeal and the same accordingly stands dismissed without any order as to costs.  
Appeal dismissed.

Cases Referred.

1. (AIR 1967 SC 878)
2. ((1976)2 SCC 142)
3. (AIR 1963 SC 1279)
4. 1997(1) RCR(Civil) 556 : ((1997)2 SCC 255)
5. (AIR 1928 PC 108)