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A relationship where one party dominates: A Sine Qua Non for establishing Undue Influence in reference with *Bellachi v Pakeeran*

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Free consent is one of the essentials of the formation of a contract (as provided for under the Indian contract Act, 1872). In case consent is vitiated by coercion, undue influence, fraud, or misrepresentation, the contract is rendered voidable at the option of the party whose consent was so caused (by Section 19 of the Indian Contract Act, 1872¹). The case at hand revolved around the question of whether the consent was vitiated by the application of undue influence or not. Through this article, the author attempts to highlight its significance among the cases concerning undue influence. It laid down that the establishment of a relationship where one party is in a position to dominate over the other is a sine qua non for constituting undue influence. Further, it was held that a registered document carries with it a presumption that it has been executed by law. The case at hand also proved that the burden of proof cannot be conveniently shifted on the defendant by the plaintiff by misusing the rights and powers bestowed upon him/her in cases concerning undue influence. In a way, it also clarified the distinction between mere persuasion and undue influence. The case portrayed how the facts and circumstances, including the mental capacity, financial soundness, and other possible constraints, etc. make all the difference and therefore must be carefully considered by the esteemed judiciary. The case verdict relied on the

¹ Indian Contract Act 1872, s 19

preceding case of *M. Rangasamy v Rengammal & Ors.*² and itself has been relied upon in several cases thereafter signifying its significance.

Keywords: *undue influence, registered document, consent, the burden of proof, pardanashin women.*

INTRODUCTION

From buying a pair of shoes from a shop nearby to transactions with foreign governments, contracts play a pivotal role in and are integral to every society. In India, contracts are regulated, supervised, and governed by *The Indian Contract Act, of 1872*³. It has completed 150 years of existence and forms the base for the modern business till the present times. There are several conditions that need to be fulfilled for forming a valid contract. One of these conditions is the free consent of the parties. Consent is said to be free when there is no coercion, undue influence, fraud, misrepresentation, or mistake involved. The contract becomes voidable when consent involves coercion, undue influence, fraud, or misrepresentation.⁴ Further, undue influence, fraud, and misrepresentation are found to be related. Undue influence can be said to be the subtle species of fraud and misrepresentation and fraud have many points in common. A study of sections 16, 17, and 18⁵ is requisite to understand undue influence, fraud and misrepresentation respectively.

WHAT IS UNDUE INFLUENCE?

*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*⁶. Further, a person is said to be in a position to dominate another's will in the case of:

- real or apparent authority;

² *M. Rangasamy v Rengammal & Ors* (2003) (7) SCC 683

³ Indian Contract Act 1872

⁴ Indian Contract Act 1872, s 19, 19A

⁵ Indian Contract Act 1872, s 16, 17, 18

⁶ Indian Contract Act 1872, s 16

- a fiduciary relationship;
- mental capacity being affected due to age, illness, or mental or bodily distress.⁷

Additionally, in cases of undue influence, the person who was in a position to dominate the other party's will is the one who has the duty of establishing that the contract did not entail undue influence. According to some, undue influence is a subtler type of fraud in which the victim's mind is controlled using cunning strategies and alluring ploys. Sometimes the outcome is the consequence of fear, compulsion, importunity, or other forms of dominance designed to stop the victim from expressing their genuine thoughts. It is a restriction that undermines free will, vanquishes opposition, and results in the other's acquiescence.

Undue influence doesn't require violence or threats of violence. It depends upon the existence of "*a relationship between two parties which, while it continues, causes one to place confidence in the other which produces a natural influence over the one which the other party abuses to his their advantage*"⁸. There are various grounds for undue influence including mental distress, urgent need for money, etc. However, statutory compulsions and mere persuasions cannot be termed undue influence. In certain cases, like unconscionable bargains, economic duress or inequality of bargaining power, etc., undue influence is presumed.

Pardanashin Women: In the case of contracts with pardanashin women as well, undue influence is presumed. Though there is no statutory definition, a pardanashin woman is generally understood to be secluded from social life.

Rescission: The rescission of contracts brought about using undue influence is given under section 19-A of the ICA, 1872⁹ which also provides for a separate discretionary power to the judges to bring changes to a contract made under the undue influence (owing to its peculiar nature).

⁷ *Ibid*

⁸ *Saxon v Saxon* [1993] 207 Ga. App. 471

⁹ *Ibid*

Misrepresentation: According to section 18 of the Indian Contract Act, of 1872, "Misrepresentation" means and includes – unwarranted statements; non-performance of duty; mistakes as to the matter of fact.¹⁰

Further, merely expressing an opinion doesn't amount to misrepresentation even if the opinion turns out to be false. Also, if the affected party had the means to discover the truth behind the misrepresentation with ordinary diligence, the party cannot complain of misrepresentation.

FRAUD

Fraud can be broadly defined as the intentional misrepresentation of facts. According to section 17 of the Indian Contract Act, of 1872¹¹, acts of fraud mean and include:

- Intentional untrue statement;
- Hiding a fact;
- Making a promise without any intention to perform;
- Deceitful act;
- Any act or omission specially declared fraudulent by law.

Further, misrepresentation doesn't include mere silence, unless it is a duty to speak or the silence itself amounts to speech in the given circumstances or when there is a change of circumstances (half-truths also amount to fraudulent representations).¹²

Collusion: This is another term that can be found related to the above sections and is found in lawsuits along with the above concepts. It can be defined as a secret agreement between two or more parties with the intent of deceiving, misleading, or defrauding others to obtain an unfair advantage or harming them or to obtain an objective forbidden by law.

¹⁰ Indian Contract Act 1872, s 18

¹¹ Indian Contract Act 1872, s 17

¹² *Ibid*

FACTS OF THE CASE

The suit was brought by the appellant over a deed of sale which was executed by her in favour of the respondent on October 7, 1999. The consideration amount was Rs. 20,000/- The appellant contended that the deed of sale was vitiated by misrepresentation, fraud, undue influence, and collusion as she was made to believe that the execution of the said document meant to provide her financial assistance. She stated that she had reposed full faith in Bellachi (her brother) who was a frequent visitor.

She also contended that she was taken away from her house and made to sign some documents when her husband was in bed due to prolonged illness. She stated that she only got to know about this deed of sale when some bank officials visited the land in question to take its measurements. The respondent however stated that the appellant had signed the deed of sale voluntarily upon receiving the consideration amount.

KEY ISSUES

The following key issues were identified by the honourable court:

- Whether the executed sale deed is valid?
- Whether there exists a cause of action¹³?

The main issue in this case, among other things, was whether the respondent was in a position to control the appellant's will.

ARGUMENTS ADVANCED

The attorney urged the court to take into account the fact that the vendor (appellant) and vendee (respondent) were related as a sister and brother, and that since the appellant was an illiterate elderly woman, it was the respondent's responsibility to establish the validity of the deed of sale.

¹³ *Bellachi v Pakeeran* (2009) 12 SCC 95

The attorney argued that the courts below made a serious legal error by failing to take this into account.

In addition, the respondent must be held accountable for failing to meet the substantial burden imposed on him since he failed to question the Registrar or any other employee of the registration office regarding the completion of the deed of sale and passing the consideration. The attorney strongly cited the *Mst. Sethani v Bhana* case, in which it was decided as follows: The plaintiff-appellant initially had the burden of proving undue influence, but given the facts and circumstances of the case, the burden was readily discharged. The sale deed in his favour was obtained by the respondent through a registered sale deed. The respondent's legal representative defended the contested decision.

JUDGEMENT AND THE RATIONALE BEHIND IT

About the first issue, it was held:

The vague charge of undue influence is insufficient; there has to be a distinct pleading addressing it. The Code of Civil Procedure's Order VI Rules 4 and 2 make it clear that there must be a specific pleading with sufficient particulars outlining the fraud or undue influence, misrepresentation, etc. There are no such particular pleadings in the current case. Other pieces of evidence also demonstrate that the plaintiff acted freely and voluntarily in executing the document.

About the second issue the lower courts, besides other things, found that the basic premise of her allegation that the respondent was a man of trust, had not been proven. As a result, the sale deed was validly executed and not subject to being set aside.

Although the parties to the suit used to live together at one point in time, the respondent parted with her company 15 years before the execution of the deed of sale. He had visited her house only when her husband fell ill. It was furthermore held that the plaintiff had sufficient funds for her 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 to enable her to meet the expenses for her husband's treatment, was not correct*¹⁴. Further, her husband and daughter were found to be government employees.

*Section 16 of the Indian Contract Act*¹⁵ provides that a relationship between the parties that allows one of them to control the other's will is a sine qua non for the existence of undue influence."¹⁶

In the case of an illiterate, pardanashin woman, the burden of proof would be on the vendee. However, the appellant was not illiterate and was capable enough of understanding what she had done. Moreover, a registered document carries the presumption that it was executed by the law. Going by the findings, the court concluded that the respondent was not in a dominating position over the appellant.

Furthermore, the plant did not contain any particulars of undue influence, fraud, etc. "*The law does not envisage raising a presumption in favour of undue influence. A party alleging the same must prove the same, subject of course, to just exceptions*"¹⁷. The honourable court relied on the case of *M. Rangasamy v Rengammal and Ors.*,¹⁸ wherein the first defendant, using his domineering control over his grandmother, obtained the execution of the two settlement documents from her by taking advantage of her advanced age, poor vision, and mental state. Given that the first defendant was alleged to have a fiduciary relationship with his grandmother, it is his responsibility to demonstrate that the executors' free and independent will resulted in the gift deeds, even though ordinarily the burden of proof falls on the person who alleges undue influence.¹⁹ Based on the above findings and decisions of the courts below, the honourable Supreme Court found no merit in the appeal and dismissed it accordingly.

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *M. Rangasamy v Rengammal & Ors* (2003) (7) SCC 683

¹⁹ *Ibid*

CASE ANALYSIS

This case is noteworthy case in the context of section 16 of the Indian Contract Act, 1872²⁰ as it upheld the seriousness of section 16(1), stating - "*Relationship between the parties to enable one of them to dominate the will of the other is a sine qua non for constitution of undue influence*²¹."

This is a significant statement as it leaves no room for any ambiguity whatsoever about the significance of the relationship between the parties in establishing undue influence, thereby helping in the proper interpretation of the section. The burden of proof generally lies on the defendant under undue influence. This case however clarified that a registered document carries with it an equal presumption that it was lawfully executed - "*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 by the 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*²²."

Also, in cases of pardanashin women, undue influence is presumed. Though there is no specific definition of a pardanashin woman, as per the Bombay High Court, a woman does not become pardanashin simply because "*she lives in some degree of seclusion*²³". The case, therefore, clarified that seclusion alone doesn't qualify a woman to be a pardanashin if she has the intelligence and ability to consent out of her own volition. It also affirmed the importance of providing particulars based on the distinctions between undue influence, misrepresentation, fraud, etc. The honourable bench also reassured the value of proofs in establishing undue influence even though there is the inherent presumption in cases of pardanashin women, etc., stating that - "*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.*"²⁴

²⁰ *Ibid*

²¹ *Ibid*

²² *Ibid*

²³ *Sheikh Ismail v Amir Bibi* (1902) 4 Bom LR 146

²⁴ *Ibid*

Yet, a question that arises from the case at hand is whether constant interaction is really necessary for the existence of natural influence and the ability to dominate the will of the other. Though the appellant wasn't in constant touch with her brother, should the fact that she was influenced as she reposed complete faith in him due to the fiduciary relationship and was going through mental distress during the death of her husband be, thus, refuted due to absence of active interaction between them?

This can be clarified using the case of *Shrimati v Sudhakar R. Bhatkar*²⁵: By and large, this case reinstated the balance of power between the plaintiff and defendant and proved that a plaintiff claiming to be unduly influenced can't recklessly hold the defendant accountable or conveniently shift the burden of proof on the defendant by misusing their rights. Further, it proved that influence is different from persuasion. Moreover, it confirmed that the establishment of a relationship where one party is in the position to dominate is indispensable for the constitution of undue influence.

SUGGESTIONS

This case brought a needed emphasis on the significance of a registered document and the establishment of a relationship wherein one party is in the position to dominate the will of the other for a constitution of undue influence. The presence or absence of such a relationship is very specific to the facts and circumstances of every case. Therefore, it is important that all the aspects including mental capacity, circumstantial compulsions, and constraints, financial soundness, and sorts of prejudices, etc. are taken into consideration in judgements by the honourable courts. Further, more clarity is yet required on substantial concepts like the definition of a pardanashin woman; who bears the burden of proof in what circumstances, etc.

CONCLUSION

This case is significant about free consent as it established that "*the relationship where one is in a position to dominate the will of the other is a sine qua non for the constitution of undue influence*". Inter

²⁵ *Shrimati v Sudhakar R. Bhatkar* (1998) Bom 122

alia, it also affirmed the sanctity of registered documents as they carry with them the presumption that they are lawfully executed. It also served as an apt example of how parties claiming to be unduly influenced cannot misuse the power and rights bestowed on them.