PETITIONER:
NINGAWWA

Vs.

RESPONDENT:
BYRAPPA & 3 ORS.

DATE OF JUDGMENT:
17/01/1968

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.

CITATION:
1968 AIR 956 1968 SCR (2) 797
CITATOR INFO :
F 1990 SC 540 (6)
F 1990 SC1173 (4,6,7)

ACT:
Indian Limitation Act (9 of 1908), Arts. 91 and 95-Suit to set aside gift deed on grounds of undue influence and fraud-Period of limitation and starting point for Iimitation.

HEADNOTE:
In 1938, the appellant executed a gift deed of four plots of land-two in village T and two in village L in favour of her husband. At that time the appellant was young and illiterate and her husband was in a position to dominate her will, and she believed that the document related only to the plots in village T which were originally the property of the husband. The properties in village L were inherited by the appellant from her father. They were very valuable and fertile and there was no reason whatever for her to gift them away to her husband. In 1941, the husband married a second wife but the appellant continued to live with him amicably till he died in 1949. Thereafter the conduct of the relatives of the second wife made her suspicious, and on enquiry, she found that the plots in village L were also included in the gift deed. She therefore filed a suit for setting aside the gift deed and for possession of all the four items of property, against the second wife and her children. The High Court, in appeal, dismissed the suit.
In appeal to this Court,
HELD : (1) The appellant's husband included the two plots of land in village L in the gift deed by fraud and without the appellant's knowledge. Since the fraudulent misrepresentation was with respect to the contents and not the character of the document the transaction was not void but only voidable. Therefore, the suit for setting aside the gift deed would be governed by Art. 95 of the Limitation Act, 1908. Since the Article prescribes a period of limitation of 3 years from the time when the fraud became known to the party wronged, and the suit in the present case was filed within a few days after the appellant came to know of the fraud, the suit with respect to the items in village L was within time and should be decreed. [800 G; 802 A-C, E]
Clough v. L. & N. W. Railway, (1871) L.R. 7 Ex. 26; Foster

v. Mackinon (1869) 4 C.P. 704, Sanni Bibi v. Siddik Hossain, A.I.R. 1919 Cal. 728 and Brindaban v. Dhurba Charan, A.I.R. 1929 Cal. 606, referred to.

(2) As regards the plots in village T, in view of s. 16(3) of the Indian Contract Act, and s. II 1 of the Evidence Act the gift deed must be presumed to have been obtained by the appellant's husband by undue influence. The suit with respect to these properties would therefore be governed by Art. 91. The period of limitation prescribed by the Article is three years and time begins to run from the date when the plaintiff discovered the facts entitling the plaintiff to have the instrument cancelled or set aside and not from the date when the plaintiff escaped from the undue influence. Since the appellant in the present case knew at the very time of the execution of the gift deed that her husband prevailed upon her to convey the plots in village T to him by undue. influence, her suit was barred by limitation so far as he plots in village T are concerned. [803 A-B, D, E-G]

L3 Sup. Cl/68-7

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Someshwar Dutt v. Tirbhawan Dutt, 61 I.A. 224. applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 586 of 1965.

Appeal from the judgment and decree dated July 29, 1960 of the Mysore High Court in Regular Appeal No. (B) 71 of 1956.

K. R. Chaudhuri, for the appellant.

Naunit Lal, for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by certificate, from the judgment of the Mysore High Court dated July 29, 1960 in R.A. (B) 71 of 1956, whereby the High Court allowed the appeal of the respondents and dismissed the suit of the appellant.

In the suit which is the subject-matter of this appeal the appellant asked for a decree for possession of the properties mentioned in the schedule to the plaint on the ground that she was the owner of the properties in spite of the gift deed, Ex. 45 executed by her on January 16, 1938. According to the case of the appellant, plot nos. 91 and 92 of Lingadahalli village were inherited by her from her father and plot nos. 407/1 and 409/1 of Tadavalga village were originally the properties of her husband Shiddappa. These plots had been usufructually mortgaged but they were redeemed from the funds supplied by the appellant and a reconveyance of the two plots was taken in the name of the appellant. At about the time Ex. 45 was executed it is alleged by the appellant that her husband Shiddappa was dominating her will and persuaded her to execute the gift deed in respect of plots 407/1 and 409/1 of Tadavalga village. The appellant was taken to Bijapur by her husband on January 16, 1938 and there Ex. 45 was written and she was made to sign it. The document was registered on January 18, 1938 at Indi. The appellant believed that the document, Ex. 45 related to only plots nos. 407/1 and 409/1 of Tadavalga village. She was never told by her husband that the document related either to plot no. 91 or plot no. 92 of Lingadahalli village. Shiddappa died in about the end of December, 1949 and till then she was amicably living with him and consequently she had no occasion to know about the true character of Ex. 45 or about its contents. Shiddappa

had taken a second wife in the year 1941 and after the death of Shiddappa in 1949 the relations of the second wife, respondent no. 4, began to assert their rights in respect of the properties of the appellant. Growing suspicious of the conduct of the respondents, the appellant made enquiries from the Karnam of the village and found that in Ex. 45 she was purported to have made a gift of properties
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included in plots 91 and 92 of Lingadahalli village to her husband Shiddappa. Consequently the appellant brought the present suit for possession of properties. Respondent no. 4 is the second wife of Shiddappa and respondents 1 to 3 are the children of Shiddappa through respondent no.. 4. They resisted the appellant's suit and contended that the gift deed in favour of Shiddappa, Ex. 45 was valid and that the same was executed voluntarily by the appellant and consequently it was not liable to be set aside. The trial court came to the conclusion that Shiddappa obtained Ex. 45 by the exercise of undue influence over the appellant, that he had represented to her that it related only to plots nos. 407/1 and 409/1 of Tadavalga village and he had fraudulently included in the document plots nos. 91 and 92 of Lingadahalli village. The trial court, however, dismissed the appellant's suit in respect of plots nos. 407/1 and 409/1 on the ground that the suit was barred under Article 91 of the Limitation Act. With regard to plots 91 and 92 of Lingadahalli village the trial court gave a decree in favour of the appellant. The respondents took the matter in appeal to the Mysore High Court. The appellant filed cross-objections against the decree of the trial court. By its judgment dated July 29, 1960, the High Court allowed the appeal and dismissed the cross-objections, thereby dismissing the suit of the appellant in its entirety. The High Court confirmed the finding of the trial court so far as plots nos. 407/1 and 409/1 of Tadavalga village were concerned and held that the suit was barred by limitation as it was not filed within three years of _the execution of the deed. As regards plots nos. 91 and 92 of Lingadahalli village the High Court held that the alleged fraud had not been established by ,he appellant.

On behalf of the appellant learned Counsel contended, in the first place, that the High Court was not justified in interfering with the finding of the trial court that plots nos. 91 and 92 of Lingadahalli village were included in the gift deed by the fraud of the husband without knowledge of the appellant. It was pointed out that the finding of the High Court is vitiated because it has not taken into account certain important circumstances upon which the trial court relied for reaching its finding. In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. At the time of the gift deed, The appellant was a young woman of about 24 years of age. She was illiterate and ignorant and all her affairs were being managed by her husband who stood in a position of active confidence towards her. The trial court found that the appellant's husband was in a position to dominate her will. The document of gift also appears to be grossly undervalued at Rs. 1,500 while actually the value of the property was about Rs. 40,000 at the relevant
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date. The trial court has found that plots nos. 91 and 92 of Lingadahalli village were the most valuable and fertile lands owned by the appellant before the execution of the gift deed. It is the admitted position that not only the appellant and her husband but her husband's two brothers and

their families lived on -he income of the two plots. There appears to be no reason whatever for the appellant to agree to transfer the valuable lands of plots nos. 91 and 92 of Lingadahalli village inherited by her from her father to her husband. It was suggested on behalf of the respondents that it was the desire of the appellant that her husband should marry a second wife and he could no,, find a bride to marry unless he possessed sufficient properties and therefore the appellant executed the gift deed in favour of her husband with a view to enable him to find a bride. But it is an undisputed fact that the appellant's husband married the 4th respondent about three years after the execution of the gift deed and it is not Possible to accept the case of the respondents that there was any connection between the gift deed and the second marriage of Shiddappa. The High Court has referred to the evidence of the attesting witness, Bhimarao who said that the document was read over to the appellant before she put her thumb impression thereon. On the basis of this evidence the High Court came to the conclusion that the plea of fraud could not be accepted as Shiddappa would not have allowed the document to be read over to the appellant if he intended to perpetrate a fraud on her. But Bhimarao was not a disinterested witness because it is admitted that he had been approached by the respondents before they filed the Written Statement in the suit. For this reason the trial court disbelieved the evidence of Bhimarao and no reason ha-, been given by the High Court for taking a different view of the evidence of this witness. The other attesting witness, Venkappa does not say that the gift deed was read over to the appellant before her thumb impression was taken on it or that she knew of its contents. In our opinion the Civil Judge was right in taking the view that the appellant never agreed to convey the lands in plots nos. 91 and 92 of Lingadahalli village and that they were included in the gift deed by the fraud of Shiddappa without the knowledge of the appellant.

On behalf of the respondents Mr. Naunit Lal, however, stressed the argument that the trial court was wrong in holding that the gift deed was void on account of the perpetration of fraud. It was submitted that it was only a voidable transaction and the suit for setting aside the gift deed would be governed by Article 95 of the Indian Limitation Act. In our opinion, the proposition contented for by Mr. Naunit Lal must be accepted as correct. It is well-established that a contract or other transaction induced or

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ainted by fraud is not void, but only voidable at the option of the arty defrauded. Until it is avoided, the transaction is valid, so at third parties without notice of the fraud may in the meantime aquire rights and interests in the matter which they may enforce against the party defrauded. "The fact that the contract has been duced by fraud does not make the contract void or prevent the property from passing, but merely gives the party defrauded a thoght on discovering the fraud to elect whether he shall continue to treat the contract as binding or disaffirm the contract and resume the property, If it can be shown that the party defrauded has at any time after knowledge of the fraud either by express words or by unequivocal acts affirmed the contract, his election determined for ever. The party defrauded may keep the question open so long as he does nothing to affirm the contact. Clough v. L. & N. W. Ry.) (1). ,

The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents

of the document out as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents Thereof. With reference to the former, it has been held that the Transaction is void,.while in the case of the latter, it is merely voidable. In Foster v. Mackinon(2) the action was by the endorsee of a bill of exchange. The defendant pleaded that he endorsed the bill on a fraudulent representation by the acceptor that he was signing a guarantee. In holding that such a plea was admissible, the Court observed :

> "It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended .... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the ,actual contents' of the instrument."

This decision has been followed by the Indian courts-Sanni Bibi v. Siddik Hossain(3), and Brindaban v. Dhurba Charan(4). It is not the contention of the appellant in the present case that there was any fraudulent misrepresentation as to the character of the gift deed but Shiddappa fraudulently included in the gift deed

(1) (1871) L.R. 7 Ex. 26, 34.
(3) A.I.R. 1919 Cal. 728.
(2) [18691 4 C.P. 704.
(4) A.I.R. 1929 Cal. 606.

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plots 91 and 92 of Lingadahalli village without her knowledge. We are accordingly of the opinion that the transaction of gift was voidable and not void and the suit must be brought within the time prescribed under Article 95 of the Limitation Act.

It was contended on behalf of the respondents that the terminus a quo for the limitation was the date of the execution of the gift deed and claim of the appellant was therefore barred a,, the suit was filed more than three years after that, date. We are unable to accept this argument as correct. Article 95 prescribe., a period of limitation of three years from the time when the fraud becomes known to the party wronged. In the present case, the appellant stated that she did not come to know of the fraud cormmitted by her husband in respect of plots 91 and 92 of Lingadahalli village till his death. The trial court has discussed the evidence on this point and reached the conclusion that the case of the appellant is true. The appellant lived with her husband on affectionate terms till the time of his death. Till then she had no reason to suspect that any fraud had been committed on her in respect of the two plots in Lingadahalli village. It is only after his death when his brothers and respondent no. 4's brothers removed grain from the house against her wishes that the appellant came to know that the lands at Lingadahalli village were included in the gift deed by fraud. The suit was instituted by the appellant within a few days after she came to know of the fraud. We are therefore of the opinion that the suit was brought within time prescribed under Art.

95 of the Indian Limitation Act so far a.plots 91 and 92 of Lingadahalli village are concerned.

As regards plots nos. 407/1 and 409/1 of Tadavalga village the trial court has found that the husband of the appellant was in a position of active confidence towards her at the time of the gift deed and that he was in a position to dominate her will and the transaction of gift was on the face of it unconscionable. Section 16(3) of the Indian Contract Act says that where a person who is in a position to dominate the will of another enters into a transaction with him which appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such transaction was not induced by undue influence, shall lie upon the person in a position to dominate the will of another. Section I 1 1 of the Indian Evidence Act also states :

> "Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is, on the party who is in a position of active confidence."
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The trial court found that the respondents had not adduced sufficient evidence to rebut the presumption under these statutory provisions and reached the finding that the gift deed was obtained by the appellant's husband by undue influence as alleged by her. The finding of the trial court has been affirmed by the High Court. But both the trial court and the High Court refused to grant relief to the appellant on the ground that the suit was barred under Art. 91 of the Limitation Act so far as plots nos. 407/1 and 409/1 were concerned. On behalf of the appellant it was contended that the lower courts were wrong in taking this view. We are, however, unable to accept this argument as correct. Article 91 of the 'Indian Limitation Act provides that a sun to set aside an instrument not otherwise provided for (and no other provision of the Act applies to the circumstances of the case) shall be subject to a three year's limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside ,ire Known to him. In the present case, the trial court has found, upon examination of the evidence, that at the very time of the execution of the gift deed, Ex. 45 the appellant knew that her husband prevailed upon her to convey survey plots nos. 407/1 and 409/1 of Tadavalga village to him by undue influence. The finding of the trial court is based upon the admission of the a appellant herself in the course of her evidence. In view of this finding of the trial court it is manifest that the suit of the appellant is barred under Art. 91 of the Limitation Act. so far as plots nos. 407/1 and 409/1 of Tadavalga village are concerned. On behalf of the appellant Mr. K. R. Chaudhuri presented ,be argument that the appellant continued to be under the undue influence of her husband till the date of his death and the three year's period under Art. 91 should therefore be taken to run not when the appellant had knowledge of the true nature of the gift deed but from the date when she escaped the influence of her husband by whose will she was dominated. It is not possible, to accept this argument in view of the express language of Art. 91 of the Limitation Act which provides that the three years' period runs from the date when the plaintiff came to know the facts entitling her to have the instrument cancelled or set aside. This view is borne out by the decision of the Judicial Committee

in Someshwar Dutt v. Tirbhawan Dutt(1) in which it was held that the limitation of a suit to set aside a deed of gift on the ground that it was obtained by undue influence was governed by Art. 91 of the Indian Limitation Act, and the three years period runs from the date when the plaintiff discovered the true nature of the deed, and not from the date when he escaped from the influence by which be alleged that be was dominated.

(1) 61 I.A. 224.

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For the reasons expressed we hold that this appeal must be allowed and the appellant must be granted a decree that the, gift deed, Ex. 45 is not binding on her so far as plots 9". and 92 of Lingdahalli village are concerned and she is further entitled to recover possession of the said two plots from the defendantrespondents with mesne profits. We accordingly set aside the decree of the High Court, restore the decree of the Civil Judge, Senior Division, Bijapur dated January 29, 1953 and allow this appeal with costs.

V. P. S.

Appeal allowed.

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