

Tungabai Bhratar Purushottam Shamji Kumbhojkav - Appellant

v.

Yeshvant Dinkar Jog and another - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1944**

Present at the Hearing :

LORD PORTER

LORD GODDARD

SIR MADHAVAN NAIR

[Delivered by LORD GODDARD]

The question that arises in this appeal is whether a mortgage deed executed by the appellant on 17th May, 1926, whereby she mortgaged to Dinker Krishna Jog, deceased (hereafter called the plaintiff), now represented by the first respondent, all her landed property which had been left to her by way of " Stridhan " to secure a loan of Rs.7,000 is binding upon her. The Subordinate Judge at Belgaum held that it was not, and his decision on this point was reversed by the High Court of Bombay.

The plaintiff was a money lender doing an extensive business and had made loans to the appellant's husband. The latter at the time of this mortgage was heavily in debt; he had mortgaged all his own property and, being pressed for money had nothing to offer by way of security for a further loan other than his already encumbered estate. He approached the plaintiff for a further loan of Rs.7,000, but the latter was unwilling to lend it either on the security of the husband's encumbered lands or on a promissory note. So the only security which could be offered was the wife's land. The appellant was married to her husband some years ago at the age of 12, and is described by the Subordinate Judge as young in years and not very intelligent. She is quite illiterate; unable to read or write, but can sign her name. She has two children living, and her stridhan property, which brings in some Rs.400 to 500 a year, is all that the family can depend on. Her husband managed the property entirely; she is evidently a submissive wife, and if her husband told her to execute a document she did so at his bidding and without informing herself of the contents. The plaintiff, who was an educated and keen business man admitted that he told the husband that he must have some letters from the appellant about the transaction, and accordingly four postcards were prepared and written by the husband to which the wife put her signature without knowing what was in them, and it would seem to be obvious that the plaintiff wanted them to strengthen his position should the transaction on which he was about to embark with the husband be called in question. He never saw her during the negotiations that he had with her husband, and according to him the only time he did see her was on the evening before the mortgage was executed, when he said he was in a hurry and that the business, of which it may be said she knew nothing, must be finished the next day. On 17th May, in the morning, the husband told

the appellant to come with him to Chikodi. He told her that a lease was to be registered. They went to the house of one Raghavendra, who afterwards witnessed the mortgage, and here it was prepared, though not in the wife's presence. The plaintiff did not appear in the document as the mortgagee; it was taken in the name of one Damodar as benamidar or nominee for him. Then when the parties went before the subregistrar the money was produced and passed over by someone whom the plaintiff sent for that purpose. Whether the appellant actually handled the money is in dispute, but it is really immaterial. She never got the Rs.7,000; some of it was passed back to the plaintiff in discharge of the husband's outstanding debt, some to another creditor, and what balance there was the husband took.

The Subordinate Judge who heard and saw the witnesses was satisfied that the appellant knew nothing of the nature of the transaction and simply did as she was told by her husband. He had always managed her property and she had passively acquiesced in what he did and signed whatever documents she was told to execute. On these facts the Subordinate Judge was satisfied that the appellant was throughout acting under the influence of her husband and without knowledge of the nature of the transaction. In the opinion of their Lordships it is unnecessary to enter into a discussion as to the burden of proof in such a case as this as the evidence here abundantly justifies a presumption that she was acting under the influence of her husband for whose benefit the mortgage was being executed. The matter was elaborately discussed before this Board in *Inche Noriah v. Shaik Allie Bin Omar* [1929] A.C. 127 and before the Court of Appeal in *Lancashire Loans Ltd. v. Black* [1934] 1 K.B. 380. The first of these cases related to a gift by an aunt, who was a feeble old woman, to a nephew who managed her property. The second was a case of a daughter who shortly after her marriage stood surety for her mother in an important money-lending transaction. In both cases it was held on a review of the evidence given that a presumption of influence was raised. In the former case Lord Hailsham in delivering the opinion of the Board approved the judgment of Cotton L.J. in the *Allcard v. Skinner* 36 Ch. D. 145 at p. 171 where he divided the cases relating to influence into two categories; first where the Court is satisfied that the gift was the result of influence expressly used by the donee for the purpose, and secondly where the relations between the donor and donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence on the donor.

It would certainly not be true to say that there is a presumption in every case where a wife confers a benefit on her husband without consideration. Equally it is not necessary in order to establish the presumption that the parties should stand in some particular category of relationship to each other. The presumption no doubt can be more easily established and indeed may be assumed in such cases as transactions between parent and infant child, solicitor and client, or spiritual adviser and penitent, but it will arise in any case in which the facts show that the circumstances are such that influence can fairly be inferred. This in the opinion of their Lordships was the foundation of the decision of the Board in *Bank of Montreal v. Stuart* [1911] A.C. 120. In that case a wife who was a confirmed invalid and who was found on the evidence to have no will of her own entered into an important transaction for the benefit of her husband. When giving evidence she appears to have somewhat indignantly denied that she was influenced by any pressure or that she acted otherwise than of her own free will to relieve her husband in distress. The Board was of opinion that this evidence only showed how deeprooted and lasting the influence of the husband was. There was ample evidence to justify the finding of the learned Subordinate Judge in the present case and their Lordships agree with his finding on this matter. Their Lordships are also of opinion that when a third party who benefits by a transaction has notice of the facts which raise the presumption he is in no better position than the person who exercises the influence. This was expressly decided in *Lancashire Loans Ltd. v. Black* (*supra*) and by the High Court of Bengal in *Badiatannessa Bibee v. Ambika Charan Ghosh* 18 Cal. W.N. 1133 and their

Lordships agree with those decisions. Their Lordships entirely agree with the findings of the Subordinate Judge as to the plaintiff's knowledge and conduct and need not repeat his findings.

The High Court however in this case took a different view to that of the learned Subordinate Judge. It appears to their Lordships that the learned Judges directed their minds much more to the question of whether it had been proved that the plaintiff had been a party to a fraud committed by the husband than to what in their opinion is the true question in the case. It is unnecessary to decide whether there was actual fraud by the husband, it is enough to show that the wife was acting under his influence and not as a free agent. Nor can they agree with the criticisms of the High Court on the Subordinate Judge's findings as to the transaction being one into which a right-minded person would enter and as to its improvidence. It seems to have been assumed by the High Court that the husband required a loan to enable him to do business with some salt pans that he had taken from the Government. The evidence does not in fact anywhere support this suggestion; it seems much more probable that he required the money to stave off pressing demands. Considering that he was at the end of his resources and that the income from the wife's property was all there was to support the family it was a most improvident thing to mortgage their only means of livelihood for the purpose of using at any rate a substantial portion of the money to pay off antecedent debts of the husband, and an action which no right-minded person ought to have entertained. Accordingly their Lordships will humbly advise His Majesty that the appeal should be allowed: that so much of the decree of the High Court as varied the decree of the Subordinate Judge and decreeing the plaintiff's suit as against defendant No. 1 and ordering her to pay the plaintiff the decretal amount with costs and interest be set aside and the decree of the Subordinate Judge on this matter be restored. The appellant should have her costs in the High Court, and such costs of this appeal as she is entitled to having regard to the fact that she has been given leave to appeal *in forma pauperis*.

In the Privy Council

TUNGABAI BHARATAR PURUSHOTTAM
SHAMJI KUMBHOJKAV

2.

YESHVANT DINKAR JOG AND ANOTHER

DELIVERED BY LORD GODDARD

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