

Amba *alias* Padmavathi - - - - - Appellant

v.

Shrinivasa Kamathi - - - - - Respondent.

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 2ND JUNE, 1921.

Present at the Hearing :

VISCOUNT HALDANE.

LORD ATKINSON.

SIR JOHN EDGE.

[*Delivered by* LORD ATKINSON.]

The appellant, who sues *in forma pauperis*, is a minor and the second wife of the respondent. She was also the niece of one Krishna Kamathi, deceased, a man of considerable property, who died on the 14th April, 1909. The respondent is the adopted son of this same Krishna Kamathi. The case made by the plaintiff was that Krishna Kamathi, being anxious that his line should be perpetuated, pressed the respondent, who was much attached to his first wife, to marry the appellant, then a girl only eleven years of age, that the respondent reluctantly consented to do so, and that the marriage accordingly took place upon the 9th March, 1908.

It was alleged to be the custom when these child marriages take place that the wife is not brought to reside in her husband's home till she has reached the age of puberty. However that may be, the respondent did not bring this wife of his to his home, and in other respects was alleged to have treated her in a way of which Krishna Kamathi so strongly disapproved that he became somewhat incensed against his adopted son. He was the manager of the family property, and, although advanced in years, was admittedly an intelligent man, who managed this property well and looked after all legal matters, such as the

institution of suits, etc. On the 30th April, 1908, Krishna Kamathi wrote to the respondent a letter, in which he stated that the latter had recently become disobedient to him and had disregarded him, that it appeared to him the respondent would behave in the same manner in future, that it did not appear to him, Krishna, proper to live with the respondent hereafter as a member of an undivided family, and that he had divided the movable and immovable family property into two equal parts, had prepared four lists thereof, and proposed to divide it between himself and his son, in the complicated manner set out in this letter. The respondent, in answer to this letter, wrote to his adoptive father a letter bearing date the 30th May, 1908, in which, after defending himself against the accusations made against him, he suggested that relatives for interested motives had poisoned his father's mind against him, begged of the father not to break up the joint family and divide the family property, but stated that if his father had made up his mind to do so he was ready to take as his share of it the property mentioned in List No. 2.

Krishna Kamathi, in pursuance of the resolution he had formed, employed two pleaders to draw up for him two deeds, dated respectively the 19th and 23rd May, 1908. The first is a partition deed between him and his son, the respondent, in which he again sets forth the charges against the latter, as he had already done in the letter already referred to, stating that he had separated and delivered to his son the property in the aforesaid List No. 2, which the latter had accepted, and provided he, the respondent, should enjoy the immovable and movable property mentioned in that list from generation to generation, he paying the sircar terva and by the entry of kudthala in his, the respondent's, name. The second deed is a deed of gift to the appellant, his niece, by which, after reciting that he had effected a partition between himself and his son, of the movable and immovable property, he, Krishna, out of the part of the same which fell to his share, had made to his niece of his own free will, because of the love he had for her, a gift of the movable and immovable property described in a schedule attached thereto and estimated to be of the value of Rs. 15,000. This deed contains the following passage :—

“ Though I have given up to you just now the full right of the under-mentioned property still as you are now a minor and unable to look to the management of the property, I shall look after the management of the property as your trustee till you become a major, and I shall myself take the rice and cash amount settled to be paid by you each year for my and my wife's maintenance and keep a regular account and spend the amount necessary for the due performance of the Mana Mariyade pertaining to this property and pay the remaining mesne profits to you as soon as you become a major, or I shall get a document executed in your name for such an amount on the safe security of immovable property and deliver the said document to you.”

Both these deeds were executed by Krishna Kamathi alone. Neither the appellant nor her father executed them.

On the 1st June, 1908, Krishna Kamathi duly presented both these deeds at the office of the Sub-Registrar of Vittal for registration. Registration, however, did not take place owing to some question as to the amount of stamp duty leviable. This involved a reference to the Registrar of the district, which caused delay. The deeds meanwhile remained with the Sub-Registrar. The respondent having in the meantime learned that his father had presented these deeds for registration, requested him to obtain a return of them, and the latter accordingly, on the 5th June, 1908, presented a petition to the Sub-Registrar praying for a return of the two deeds without their being registered. On the 9th June, 1908, Krishna and the respondent entered into an agreement (*Tahanama*) to the effect that during their lifetime they would not partition the family property. This agreement was duly registered three days later, namely, on the 12th June, 1908. On the 10th June, 1908, Ramayya Shanbhogue, the father of the appellant, presented on her behalf a petition to the said Sub-Registrar objecting to the return to Krishna of the two deeds aforesaid until they had been registered, and informing this official of his, the petitioner's, intention to institute a suit to secure their compulsory registration.

In answer to this petition the Registrar, on the 19th October, 1908, informed the petitioner that the two before-mentioned deeds would be returned to the presentant, Krishna Kamathi, by the Sub-Registrar of Vittal unless the claimant under the deed of gift obtained an injunction order of a competent Court against their return within one month from the receipt of this notice. Accordingly the minor, Amba Bai, by her father as next friend, instituted a suit (No. 44 of 1908) against Krishna Kamathi and her husband to obtain the suggested relief. The first defendant, Krishna, then filed a long written statement which is significant in its terms. After admitting that he had executed the two deeds and had presented them for registration, and after stating that his adopted son left his own house and went to reside in the house of his father-in-law at Mangalore for many days, he alleged that Ramayya Shanbhogue, taking advantage of his Krishna's old age, diseased and helpless condition, had represented to him that the conduct of his son, the second defendant, amounted to deliberate disobedience and to a disregard of his, Krishna's, comforts; that his said son intended to abandon him altogether, and if necessary to marry a third girl or to himself adopt a son; that by these fraudulent misrepresentations the plaintiff, Amba Bai's father, had prevailed upon him, Krishna, to consent to a partition of his property and to make a provision for this girl, his niece, out of his own share; that in this way the two deeds in question were by fraud, misrepresentation and undue influence procured from him, an old man struck with disease. He further alleged that he only became aware of the effect of the two deeds after he had presented them for registration and therefore was entitled to have them returned to him

unregistered. And he made the point that the plaintiff, not being a party to the deed of partition, had no right to maintain a suit for its registration under the Registration Act. It clearly appears from these statements that Krishna Kamathi thus early clearly made the case afterwards strenuously insisted upon that the plaintiff's father, for the purpose of procuring for his daughter the benefits conferred upon her by the two before-mentioned deeds, exercised upon Krishna undue influence by the insidious method of poisoning his mind against his adopted son. This suit was dismissed as against Shrinivasa, the appellant's husband, but compromised as between her father on her behalf, and her uncle Krishna. The terms of the compromise were embodied in a deed dated the 29th March, 1909, styled in the proceedings the deed of rectification. By this deed it was provided that Krishna would consent and thereby did consent to the registration of the two deeds dated 19th May, 1908, and 23rd May, 1908, respectively, and further that the appellant should enjoy the partitioned property subject to certain amendments and conditions therein set out. These alterations and conditions seriously modified and diminished the provision made for Amba Bai by the deed of gift of the 29th May, 1908. For instance, it burdens the property given to her by the latter instrument with a liability to pay Rs. 360 annually to Krishna's wife, Devi. Though providing that he, Krishna, should continue to be her trustee till her majority, it provides that owing to his ill-health her father should manage the property given to her on her behalf. It further provided that though the property given to her by the deed of gift was to be enjoyed by her from generation to generation, if she and her husband came together and lived amicably, and had children, the property was to be enjoyed on that line in succession; but that if she should have no children, and her Savathe (co-wife) should have children, this property should be enjoyed by the latter's descendants after her, Amba's, death. Numerous provisions are, in addition, introduced in reference to adoption contingent on the many events named, and then the important provision is introduced that Amba should have no right to alienate the properties given to her in any manner while she behaved herself according to the conditions contained in the deed. This deed was executed by Krishna Kamathi in the presence of many witnesses. It was not executed by Amba Bai nor by her father, Ramayya Shanbhogue, nor by her husband, the respondent. It is obvious that it supersedes the deed of gift of the 29th May, 1908. Its aim, object and effect are substantially different. A decree by consent was accordingly made in the compromised suit on the 31st March, 1909, in which, after reciting at length the effect of the compromise, it was ordered and decreed "that the partition deed of the 19th May, 1908, and the gift deed of the 23rd May, 1908, in dispute be returned to the plaintiff's next friend for presentation before the Sub-Registrar of Vittal, that the Sub-Registrar do register them if they be duly presented before him for registration within thirty days from this date."

The deed of the 29th March, 1909, was duly registered. The two deeds of the 19th and 23rd May, 1908, were returned to the appellant's father and on the 14th April, 1909, the day upon which Krishna Kamathi died, were presented by the appellant's father to the Sub-Registrar and registered.

The suit out of which this appeal has arisen was, on the 17th August, 1914, brought by the appellant, suing *in formá pauperis* by her father as her next friend, to recover from her husband possession of the property given to her by the deed of gift of the 29th May, 1908. On the 26th November the defendant filed a written statement in the suit in which the main defences relied upon were (1) that the execution of these two deeds of May, 1908, was procured by the misrepresentation, fraud and undue influence of the father of the plaintiff upon Krishna Kamathi, by which the mind of the latter was poisoned against the respondent and the said deeds were therefore inoperative and unenforceable and not binding upon him; (2) that the compromise of the suit No. 44 of 1908, and the execution of the deed of the 29th March, 1909, respectively, were instituted and procured by similar means, and that the decree made in said suit was void and of no effect; (3) that the deed of gift of the 29th May, 1908, was cancelled and annulled by the execution of this rectification deed; and (4) that the registration of the two deeds of May, 1908, was invalid and ineffective under the provisions of the Registration Act, and was therefore void *ab initio*.

The Subordinate Judge found (1) that the two deeds of May, 1908, were procured by undue influence by the appellant's father exercised upon the respondent's aged father, and were therefore void; (2) that the agreement of the 9th June, 1908, entered into between the respondent and his father was valid, that the deed of rectification was therefore invalid and void, that therefore the appellant was not entitled to recover possession of the properties mentioned in the plaint; and (3) that the two deeds of May, 1908, were validly registered. He in the result dismissed the plaintiff's suit with costs. On the appeal from this decree to the High Court of Madras, Abdur Rahim, J., concurred with the Subordinate Judge's finding that the two last-mentioned deeds upon which the appellant's case rested, had been obtained by the undue influence of the appellant's father. Also that the two deeds were repudiated by Krishna Kamathi before they were registered, that they were not properly presented for registration and were not validly registered.

Oldfield, J., differed from his colleague on the question of the procurement of these deeds by the exercise of undue influence on Krishna Kamathi, but agreed with him in the view that Krishna had the right to revoke the deed of gift of the 23rd May, 1908, and had revoked it, and both of these learned Judges held that under the provision of the 32nd Section of the Registration Act the two deeds of May, 1908, were not validly registered. They accordingly affirmed the judgment of the Subordinate Judge.

Their Lordships do not think it necessary to pronounce any decision on the question upon which these two learned Judges differed. It was not and is not disputed that these two deeds cannot be given in evidence or enforced if they have not been duly registered. Their Lordships are clearly of opinion that as the appellant was not only a minor but a married woman, her father had ceased to be her natural guardian, and had never been appointed her legal guardian, and was not therefore her assignee or representative within the meaning of Section 3 of the Registration Act, 1877. He was not an executant of the said deeds or either of them; neither was within the meaning of Section 34 of that Act, the representative assign or agent duly authorised on the behalf of Krishna Kamathi, deceased, the only executant. The presentation by him of the two deeds for registration was in direct conflict with the express provisions of this 34th section. The deeds were consequently never legally registered. The registration of them which was procured was illegal, invalid and a nullity; and if that be so, as in their Lordships' opinion it must be held to be, it is not disputed that the deeds would be void and unenforceable, and this apart altogether from the question whether they have not been impliedly revoked by the agreement dated the 9th of June, 1908, entered into between Krishna Kamathi and the respondent and duly registered by the former on the 12th of June, 1908. It is therefore unnecessary for their Lordships to expressly decide this latter question. They are of opinion that owing to the invalidity of the registration of the two deeds of May, 1908, the appeal fails and must be dismissed, and they will humbly advise His Majesty accordingly.



In the Privy Council.

AMBA *alias* PADMAVATHI

vs.

SHRINIVASA KAMATHI.

DELIVERED BY LORD ATKINSON.

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