Privy Council Appeal No. 18 *of* 1946

Parikh Atmaram Maneklal - - - - - - - *Appellant*

v.

Bai Hira *alias* **Shanta, widow of Shah Balabhai Atmaram** - - - - - - *Respondent*

Same - - - - - - - - - - - - - *Appellant*

v.

Bai Hira *alias* **Shanta widow of Shah Balabhai Atmaram and another** - - - *Respondents*

Bai Hira *alias* **Shanta, widow of Shah Balabhai Atmaram** - - - - - - *Appellant*

v.

Parikh Atmaram Maneklal - - - - - - *Respondent*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD FEBRUARY, 1948.

Present at the Hearing :

LORD NORMAND
LORD MORTON OF HENRYTON
SIR MADHAVAN NAIR

[*Delivered by* LORD NORMAND]

The appellant, Parikh Atmaram Maneklal, was the defendant in the main suit which was brought by the respondent, Bai Hira, in the Court of the Subordinate Judge at Ahmedabad for a declaration that a document dated 12th June, 1926, was not binding on her and for certain consequential reliefs. The chief question in the appeal is whether these consequential reliefs are time barred by Article 91 of The Indian Limitation Act (Act IX of 1908).

The respondent is the widow of the appellant's son Balabhai who died intestate and without issue on the 18th February, 1926. The family had been an undivided Hindu family but on the 31st December, 1925, a physical partition took place between Balabhai on the one hand and the remaining members of the family on the other. Balabhai had received before his death immoveable and moveable properties valued at Rs.1,12,000 and there remained certain properties to be physically divided. Among the moveable property received by him were ornaments to the value of Rs.13,500. The value of the whole moveable and immoveable property, other than the family property which remained to be divided, left by Balabhai was about Rs.1,25,000.

The respondent, who was Balabhai's heir entitled to succeed to his whole property, went on his death to reside in the appellant's house, and on the 12th June, 1926, she and the appellant executed the document which she now seeks to set aside. This document provided:—

(1) That the respondent should have the right of residence during her life in a house, which was part of Balabhai's estate, valued at Rs.17,000 and that the appellant should repair the house according to the respondent's suggestions at a cost of about Rs.3,000 and should also pay the insurance premia and the municipal taxes in respect of it;

(2) That the respondent was to retain ornaments of the value of Rs.5,000;

(3) That Rs.12,500 were to be deposited at interest which the respondent was to receive, with liberty to spend Rs.10,000 of the principal in charity, and that after her death the appellant should spend out of the sum then remaining such amount as would make up the Rs.10,000 to be given to charity, and that he or his heirs and representatives should take the residue;

(4) That Rs.7,500 should be deposited at interest which the respondent was to receive and that the principal should belong to the appellant and his heirs and representatives;

(5) That in case of any loss of the sums above mentioned in clauses (3) and (4) the appellant should give proper maintenance to the respondent;

(6) That the appellant and his heirs and representatives were to be the absolute owners of all the other property left by Balabhai and the respondent was to have no claim thereto.

It is now agreed after some controversy that a copy of this document was given to the respondent in August, 1926.

The respondent's mourning ended in January, 1927, and she then went to reside for two months at Viramgam where her maternal grandfather lived. Thereafter she again resided in the appellant's house until May, 1928, when she took up residence in the house allocated to her by the agreement. There is a dispute about the sum spent on the house by the appellant and it is the subject of a cross appeal which will be dealt with hereunder. The provision in the agreement for the respondent's retention of ornaments worth Rs.5,000 was not carried out according to its terms and in lieu of the ornaments the respondent was given and accepted gold to the value of Rs.3,800.7.9 and cash amounting to Rs.1,199.8.3. The sums provided for in clauses (3) and (4) of the agreement were deposited at interest in November, 1927, and the respondent thereafter received the interest accrued on them.

In April, 1930, the respondent consulted Mr. Haridas Pradhubas, a solicitor in Bombay, about her rights and on his advice commenced the main suit on 14th October, 1930. In her plaint she alleged that the defendant got her to execute the document of 12th June, 1926, while she was in distress and under his protection, influence and control, and without allowing her an opportunity for independent advice or legal aid. She also alleged that when she signed she did not grasp the import of the document, and that it was only when the document was explained to her that she understood that it purported to be a relinquishment of her rights over the property which she had inherited from her husband.

There are concurrent findings that the respondent signed the document while under the appellant's influence and protection and without independent advice when she was suffering great distress and was unfit to understand how adversely her rights were affected by it, and that in fact she did not understand its meaning and legal consequences. There is therefore no doubt, nor is it disputed, that the agreement embodied in the document is voidable.

Article 91 of the Indian Limitation Act, however, provides that a suit 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 years limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside are known to him. When the ground for setting aside the instrument is that the plaintiff did not appreciate its true nature and legal consequences, it has been said by this Board, and it was not disputed in this case, that the limitation begins to run from the date when the plaintiff became aware of the true nature and legal consequences of the instrument (*Someshwar Dutt* v. *Tirbhawan Dutt* (1934) L.R. 61 I.A. 224, *Ramchandra Jivaji Kanago* v. *Laxman Shrinivas Naik* (1944) L.R. 72 I.A. 21).

The finding of the High Court is that there is no reliable evidence produced by the appellant to show that the respondent came to know the true nature of the deed before March, 1930, when she met her solicitor in Bombay. It cannot be said that the Subordinate Judge made a similar finding, but there is no finding by him inconsistent with this finding of the High Court. The Subordinate Judge considered that the respondent had the means of knowing the true nature and import of the deed as soon as she received a copy of it in August, 1926, and that if she had read the document then she would have understood it. It is true that an intelligent and attentive reader of the document might have appreciated its true meaning and effect but the law has accorded to persons in the position of the respondent a high degree of protection in their dealings with persons with whom they contract. In *Hem Chandra Roy Chaudbury* v. *Suradhani Debya Chaudhurani* (1940) L.R. 67 I.A. 309 it was held by the Board that a purdanashin woman of considerable business capacity was not bound by a mortgage agreement which was read but not explained to her before she signed it, because she did not understand that she was making herself personally bound to repay the borrowed money. In that case the transaction was between strangers, whereas in the present case the appellant owed a duty of explanation not merely as a stranger transacting with a purdanashin woman in a manner prejudicial to her interests but also as a father-in-law transacting with a daughter-in-law resident in his house and under his protection. It is for him to prove the date at which she in fact came to understand the true nature of the transaction which ought to have been explained to her by him and it is not enough for him to show merely that she had an opportunity of reading the document and that its terms were not complex or obscure.

Their Lordships are therefore of opinion, agreeing with the High Court, that the subordinate Judge was in error in holding that the limitation began to run in August, 1926, or at any date earlier than March, 1930.

The result is that, as the High Court in effect held, the respondent is entitled not only to a declaration that the document of 12th June, 1926, is not binding on her, but also generally to be restored to the position in which she would have been had the document never been executed and therefore to the consequential reliefs some of which were refused by the Subordinate Judge.

The respondent has cross-appealed upon two points which must now be considered. The first point relates to a sum, which according to the finding of the High Court may be taken at Rs.17,000, expended by the appellant in reconstructing the house allocated to the respondent under the agreement of the 12th June, 1926. The High Court has given the appellant credit for the expenditure of this sum in the account between him and the respondent. The respondent maintains that the appellant is entitled to not more than Rs.3,000. For that figure, however, there is now no basis. It rests only on clause (1) of the agreement of the 12th June, 1926, in which the appellant undertook to expend Rs.3,000 on the repair of the house. The agreement itself now falls to be rescinded and the sum claimed by the appellant is not the sum expended on repairs but a sum expended on the reconstruction of the building. The High Court has found that the

respondent admitted that she had agreed to the expenditure of this sum on her behalf and for her account. The admission was criticised as ambiguous in its terms. Nevertheless the fact is that the respondent stood by and gave at least tacit consent to the expenditure of this sum upon the reconstruction of her house. That was at a time when she had not realised that she had signed a relinquishment of her rights as her husband's heiress. In these circumstances the natural inference is that the expenditure was made with her consent and on the footing that it would be repaid out of the estate to which she is entitled as her husband's heir. The Board are therefore of opinion that the judgment of the High Court on this head is well founded and should be affirmed.

The other point in the cross appeal is concerned with that part of the High Court's Order directing the appellant to return the ornaments left by Balabhai on the respondent's giving him credit for Rs.5,001-8-0 already paid to her by him in lieu of ornaments or that the appellant should pay to the respondent the value thereof viz.: Rs.13,500 less the sum of Rs. 5,001-8-0 i.e., Rs. 8,498-8-0. The Board are of opinion that the respondent is entitled to the restitution of all the ornaments left by her husband and that if the appellant is unable to return the ornaments or any of them he should pay to the respondent the value as assessed by the Court as at the date of the execution. This will restore the respondent as far as possible to the position in which she would have been if she had never been induced to sign the agreement of 12th June, 1926.

The second appeal arises out of a suit in which the appellant sued the respondent and the Bharatkhand Textile and Manufacturing Company Limited for an injunction against the Company's paying to the respondent the sum of Rs.12,500 which had been deposited with the Company in implement of clause (3) of the agreement of the 12th June, 1926. The decision in this appeal depends upon the decision on the appeal in the main suit. Accordingly the appeal against the decision of the High Court falls to be dismissed.

Their Lordships will therefore humbly advise His Majesty that the appeal in the main suit should be dismissed, that the cross appeal should be allowed to the extent of substituting for the direction that the defendant do return to the plaintiff the ornaments mentioned in schedule III on plaintiff giving him credit for Rs.5001-8-0 already paid to her by him in lieu of ornaments or in the alternative defendant shall pay to the plaintiff the value thereof viz. Rs.13500 less the aforesaid sum of Rs.5001-8-0 i.e. Rs.8498-8-0, a direction that the defendant shall return the ornaments mentioned in schedule III to the plaintiff on the plaintiff's giving him credit for Rs. 5001-8-0 already paid to her by him provided that if he shall satisfy the Court executing the decree that he is unable to return any of the said ornaments he shall pay to the plaintiff the value of such ornament or ornaments as assessed by the said Court as at the date of the execution. Their Lordships will humbly advise His Majesty that the appeal in suit No. 963 of 1930 should be dismissed and that the decree of the High Court should be affirmed. The appellant will pay to the respondent seven eighths of her costs of the appeals and the cross appeal.

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In the Privy Council

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SAME

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DELIVERED BY LORD NORMAND

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