

20, 1953

No. 13 of 1952.

In the Privy Council.

33537

ON APPEAL
FROM THE SUPREME COURT OF CEYLON.

UNIVERSITY OF LONDON
W.C.1.
9 - NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

MRS. BRIDGET ANTONY *Appellant*

and

1. MISS IMELDA WEERASEKERA
(now Mrs. IMELDA DE ZOYSA)

10 2. OLIVER GILES DE ZOYSA *Respondents.*

CASE FOR THE FIRST RESPONDENT

RECORD.

1. This appeal is from a Judgment and Decree of the Supreme Court of Ceylon, dated the 11th September, 1950, dismissing an appeal from a Judgment and Decree of the District Court of Colombo, dated the 8th September, 1948, dismissing an action in which the Appellant sought to set aside a deed of gift executed by her in favour of this Respondent. pp. 233-234. pp. 209-229.

2. The Appellant is a widow. This Respondent is a daughter of the Appellant's deceased daughter Margaret and lived with the Appellant until 12th April, 1946. The second Respondent is related to the other parties : his stepsister was married to a brother of the Appellant's. On the 28th June, 1947, this Respondent was married to the second Respondent's son, Aenian de Zoysa. p. 24. p. 77. p. 39.

3. The deed of gift which the Appellant sought to set aside was executed by her on the 12th April, 1946. By it the Appellant gave certain lands to this Respondent absolutely. The Appellant alleged that the said deed of gift was void on the ground that it was "obtained by pressure and surprise and without making her aware of the contents and through the exercise of undue influence and by fraudulent representations." p. 301. p. 12.

4. The Appellant based her claim upon the following allegations of fact set forth in her Plaint dated the 11th June, 1946 :— pp. 11-12.

(1) That the second Respondent commenced to visit the Appellant in 1945 and to evince concern and interest in the Appellant and this Respondent and continued such behaviour as a self-constituted friend and adviser to the Appellant.

(2) That in or about November, 1945, the second Respondent suggested to the Appellant a marriage between his son and this Respondent, to which proposal the Appellant did not agree.

CASE FOR THE FIRST RESPONDENT.

(3) That notwithstanding the Appellant's rejection of the said proposal the second Respondent continued his visits, which became more frequent thereafter, and gained an ascendancy over the minds of this Respondent and the Appellant with a view to gaining his purpose of putting through the marriage of his son with this Respondent and securing all the properties of the Appellant for the benefit of his son.

(4) That with the aforesaid intent the second Respondent succeeded in making this Respondent amenable to his wishes prior to the 11th and 12th April, 1946, and at his instigation this Respondent expressed a desire to be a boarder at St. Bridget's Convent, Colombo. 10

(5) That on the 11th April, 1946, the second Respondent visited the Appellant and offered to take the Appellant and this Respondent to St. Bridget's Convent on the following day.

(6) That on the 12th April, 1946, the second Respondent took the Appellant and this Respondent in his car to the house of one Dr. Van Dort on the pretext that they were being taken to the Convent.

(7) That at the said Dr. Van Dort's house, on the 12th April, 1946, to the Appellant's surprise the second Respondent informed her that a deed was ready for her signature donating some property to this Respondent subject to a life-interest in the Appellant's favour and that it would be in her own interest to sign the deed. 20

(8) That the Appellant refused to sign the said deed without consulting her brothers or lawyers but the second Respondent and those present induced and prevailed upon her to sign it.

(9) That this Respondent was fully aware of the aforesaid circumstances under which the said deed was executed in her favour. 30

(10) That the Appellant subsequently found that the said deed conveyed as a Gift absolute all the valuable properties of which she was possessed.

(11) That this Respondent subsequently agreed to re-transfer the said properties to the Appellant but failed and neglected to do so in spite of demands.

(12) That the said deed of gift was not the Appellant's act and deed inasmuch as she did not know the contents thereof.

(13) That the second Respondent was made a party to the action as his presence before the Court was necessary in order to enable the Court effectually and completely to adjudicate upon all the questions involved in the action. 40

5. This Respondent by her Answer, dated the 29th August, 1946, put forward a general denial, specially denied the allegations that the said deed was not the act and deed of the plaintiff and that it was obtained by pressure or surprise or through the exercise of undue influence or

fraudulent representations or without the Appellant being made aware of its contents, stated that the said deed was duly executed by the Appellant of her own free will, and alleged that the action had been instituted at the malicious instigation of the Appellant's son, one Simon Stock Antony.

6. A similar Answer, dated the 30th August, 1946, was filed by the second Respondent. pp. 15-16.

7. Issues were framed on the pleadings and the trial took place in the District Court on the 23rd July, 1947, the 20th, 21st and 22nd October, 1947, the 15th and 16th December, 1947, the 9th and 25th February, 1948, the 5th, 12th and 15th March, 1948, the 26th and 28th May, 1948, the 15th and 17th June, 1948, and the 22nd July, 1948. During the course of the trial evidence was adduced both by the Appellant and by the Respondents, dealing with all the matters alleged in the pleadings. p. 17.

8. The District Judge, in his Judgment, considered in detail the evidence which had been adduced before him. He stated that with regard to the allegation of pressure, surprise, undue influence or fraudulent misrepresentation, the Appellant in her evidence had taken up an entirely different position from that alleged in her Complaint, but explained how he proposed to deal with the evidence on that point, in the following terms :— pp. 209-229. p. 210.

“ Issues were framed in accordance with the averments in the plaint. Strictly speaking, even on the plaintiff's own evidence, these issues will have to be answered mainly against the plaintiff because, according to the evidence, even if there was any pressure, surprise or undue influence, it was not exercised as alleged in the plaint or in the circumstances set out in the plaint. I propose, however, to consider whether on the evidence led there was undue influence, pressure, surprise or fraudulent representation of any kind which would justify the setting aside of the deed of gift.” p. 211, l. 6.

30 The said Judgment also included the following passages :—

“ Considering this case purely from the evidence led on behalf of the plaintiff, if Mrs. Antony's evidence is to be accepted, there was no doubt a fraud perpetrated.” p. 222, l. 23.

“ On the plaintiff's evidence, therefore, the only question one has to consider is whether there was fraud and whether there was any fraudulent misrepresentation which induced her to sign it.” p. 223, l. 4.

“ With regard to Mrs. Antony . . . I find from her evidence and the manner in which she gave it that I can place very little or no reliance upon it.” pp. 225-226.

40 And after reviewing the whole of the evidence the Judge concluded in the following terms :—

“ I am satisfied on the evidence that she [i.e., the Appellant] knew exactly what she did on the 12th April, 1946. In my opinion the facts of this case do not justify the inference either of undue influence or of surprise or of any pressure being brought to bear upon the plaintiff.” p. 229, l. 15.

p. 229, l. 28.

Accordingly the Judge ordered and decreed that the action should be dismissed with costs.

p. 233.

9. The appeal from the District Court was argued in the Supreme Court on the 6th, 7th, 8th and 11th September, 1950, before Jayetileke, C.J., and Dias, S.P.J., by Counsel for the Appellant. Counsel for the Respondents were not called upon. The Judgment of the Chief Justice, with which Dias, S.P.J., agreed, was in the following terms :—

p. 234.

“ We do not think it necessary to call upon Counsel for the respondent [sic]. There are no merits in this appeal. We would dismiss it with costs.”

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p. 234.

The Court decreed accordingly.

10. This Respondent submits that the Judgment and Decree of the Supreme Court should be upheld and this Appeal dismissed for the following amongst other

REASONS

- (1) BECAUSE the Judgment of the Supreme Court is right, for the reason stated by Jayetileke, C.J., and for other good and sufficient reasons.
- (2) BECAUSE this appeal raises purely questions of fact and no question of principle is involved. 20
- (3) BECAUSE the Judge of the District Court, after a full and proper consideration of the evidence, arrived at a conclusion of fact on the evidence, and it was right and proper for the Supreme Court to uphold the said conclusion of fact.
- (4) BECAUSE the said deed of gift was valid and was not obtained by pressure or surprise or without making the Appellant aware of the contents or through the exercise of undue influence or by fraudulent representations.
- (5) BECAUSE on the evidence the Appellant is not entitled 30 to the relief which she seeks.

RALPH MILLNER.

In the Privy Council.

ON APPEAL FROM THE SUPREME
COURT OF CEYLON.

BETWEEN

MRS. BRIDGET ANTONY *Appellant*

and

1. MISS IMELDA WEERASEKERA
(now Mrs. IMELDA DE ZOYSA)
2. OLIVER GILES DE ZOYSA
Respondents

CASE FOR THE FIRST
RESPONDENT.

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