Privy Council Appeal No. 131 *of* 1928.

Valluri Ramanamma - - - - - - - *Appellant*

v.

Marina Viranna - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH FEBRUARY, 1931.

Present at the Hearing:

LORD ATKIN.
LORD THANKERTON.
LORD MACMILLAN.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* SIR GEORGE LOWNDES.]

In 1916 the appellant was entitled to certain immovable properties of considerable value, which had devolved upon her as her mother's *stridhan*. They were withheld from her by her brother, who was apparently a man of position and influence. Attempts had been made to settle the claim, but nothing was effected, and the period of limitation was approaching. It was accordingly decided that a suit must be instituted. The appellant was then 21 years of age and her husband, Pattabhiramaya, was 23 or 24. His father, Sattayya, was elderly and in bad health and was not prepared to take an active part in the litigation. Under these circumstances it was thought desirable to secure the assistance of the respondent, the brother-in-law of the appellant's husband, who was an older and more experienced man, and of considerable wealth. He was quite willing to assist gratuitously, but it was considered advisable that he should have a personal stake in the litigation and be legally bound to an active co-operation.

Accordingly on the 25th August 1916 a document was drawn up in two parts by the terms of which the respondent was to contribute one-quarter of the costs of the litigation, and, in the event of failure, to pay one-quarter of any costs that might be awarded to the other side : and in return the appellant was to make over to him one-quarter of whatever she might recover. One part was executed by the respondent, and the other by the husband of the appellant in her name. The two documents are exhibits A and A^1 in the case.

The suit was launched, and was eventually successful. The respondent claimed his quarter share of the properties which the appellant recovered. The lady's husband put him in possession of some 13 acres of land which he agreed to accept as the equivalent of his share, but the transaction was not completed. Quarrels ensued ; criminal proceedings were taken with reference to the 13 acres, which the respondent was not allowed to retain, and the suit out of which this appeal arises was filed by the respondent to enforce the agreement.

It has been suggested by the appellant's counsel that the documents above referred to did not in fact come into existence till 1920 after the lady's suit had ended in her favour, and have been fabricated in support of a false claim, but there is, in their Lordships' opinion, no foundation for this suggestion. They have no doubt that the documents were drawn up and completed on the 25th August 1916, and that exhibit A which was executed by the respondent was in the possession of the appellant's husband from that time onwards. It was produced at the hearing of the present suit by a witness to whom it had been given by the husband 18 months before in order to ascertain whether it was legally enforceable. It was also proved by the *amin* of the Court, by whom delivery of the lands decreed to the appellant was given, that the husband requested him to give delivery to the respondent of what was evidently the 13 acres above referred to. Their Lordships have no doubt therefore that exhibits A and A^1 are genuine documents executed on the date they bear. The real issue in the case is whether the appellant authorised their execution by her husband in her name, with subsidiary questions based on the doctrine of champerty, and her position as a *gosha* or *pardanashin* lady. The appellant denied all knowledge of the transaction and her husband did not give evidence.

The story told by the respondent and his witnesses is that the proposed agreement was discussed upon the 24th August between the respondent on the one hand, and Sattayya, Pattabhiramaya and the appellant on the other : that all the terms were then agreed to by the lady except as to the share that was to be allotted to the respondent. As to this the appellant desired to consult her elder sister who lived in a neighbouring village, and had promised to share in the expenses of the litigation. Pattabhiramaya was sent to ascertain her views. He returned the next morning and reported that the share of the respondent should be

one-quarter. Thereupon a writer was summoned and the preparation of the document was begun on the upper verandah of the house, the appellant being present only a few feet away in an inner room. The terms were dictated by Sattayya, and when finished exhibit A was read out by the writer to the appellant who was standing by the door-frame. She agreed to it. Her husband then took the document to her in the inner room, and brought it out with a thumb-impression on it, which he said was that of the appellant. He then affixed to the document the mark of his wife and wrote her name against the mark. Both documents were attested by him and Sattayya, and also by Kondayya, a brother-in-law of the respondent, and by one Dantu, a neighbour. The writer also affixed his signature to it.

At the trial the only issues raised were (1) Whether the suit agreement is true and legally valid ; (2) If not true or valid whether the plaintiff is entitled to any remuneration for services rendered, if any : and (3) What relief is the plaintiff entitled to.

The respondent and Kondayya gave evidence to the effect set out above. They each stated that the appellant assented to the terms of the agreement.

Dantu and the writer were also called by the respondent. The trial Judge states that they were obviously unwilling witnesses, and only attended under proclamation (O. 16, r. 10 of the Civil Procedure Code). They supported the respondent in the main outlines of the story, but the writer denied having read out the document. Sattayya was dead, but it was not disputed that the documents bore his attestation ; nor was it suggested that the appellant's name was not in the handwriting of her husband, or that his attestation was otherwise than genuine.

The appellant gave evidence on her own behalf before a Commissioner. She said " I did not execute and deliver an agreement to the effect that I would give a one-fourth share in the property that I would get in the event of my success. Viranna (the respondent) did not execute and deliver any agreement to me. I did not execute Exhibit A^1 in favour of Viranna. I did not affix my thumb-impression." She was cross-examined at considerable length, but it does not seem to have occurred to the learned legal gentleman who represented the respondent to put to her the details of his client's story, any more than it occurred to the appellant's Vakils to cross-examine either the respondent or Kondayya as to the lady's presence on the 25th August, when the documents were drawn up, or as to her knowledge of or assent to their terms. Their Lordships cannot but regret these obvious deficiencies in the conduct of the case upon either side : they are, unfortunately, common in India.

For the appellant an expert was called who had made a critical comparison of the thumb-mark on A^1 with admitted fingerprints of the appellant, and he deposed that the impression on the document was not hers.

It is this that causes the difficulty of the case. It has been contended for the appellant that the thumb-print was to be the token of her husband's authority to execute on her behalf, and that if it was not in fact the thumb-print of the appellant, the only possible inference is that there was no such authority.

Their Lordships recognise the force of this argument, but they do not think that it is conclusive. Though a genuine thumb-print might in the present case be unimpeachable evidence of her authorisation, it was not essential to the validity of the document. Authority or no authority is a question of fact, and may be proved in various ways: it may be a legitimate deduction from the circumstances under which the transaction took place. If, as the expert testifies, the thumb mark was not that of the appellant the husband must have had some motive for deceiving the persons assembled in the outer room: what it was he only could explain; but it is not suggested that he had any reason to defraud his wife, or anything to gain by doing so.

The Sub-Judge of Cocanada, by whom the suit was tried, delivered his judgment on the 29th April, 1924. He analysed the evidence on both sides at considerable length and with obvious care. The respondent and Kondayya impressed him as truthful witnesses. He felt himself bound to act upon the opinion of the expert that the thumb-mark was not that of the appellant. But, giving full weight to this consideration, he sums up the result of his examination in the following words:—

> "I do not feel any doubt in coming to the conclusion that the suit agreements Exhibits A and A[1] must have been duly executed by the defendant (the appellant) deliberately, with perfect knowledge of the circumstances under which the arrangement had to be entered into."

The learned Judges of the High Court evidently felt the same difficulty as to the thumb-mark, but having regard to the fact that the husband had not given evidence they concurred in the conclusion of the trial Judge.

The usual practice of the Board would be to accept these concurrent findings of fact as conclusive, but the question of the thumb-mark has led their Lordships to examine the evidence in detail. The lack of cross-examination on material points leaves it a little vague, and the absence of the husband from the witness box is unfortunate, though, under the circumstances, not inexplicable. Their Lordships think that in such a case he might well have been summoned and examined by the Court under the provisions of Order 16, Rule 14 of the Civil Procedure Code.

On the whole, however, their Lordships are satisfied that the story told as to the execution of Exhibit A is in the main a true one, and there is undoubtedly evidence of the appellant's assent to its terms, which the Judge who heard the witnesses was entitled to believe. If the main outline of the story as to the discussion on the previous day, and the appellant's presence at the doorway of the inner room during the family conclave in

which the document was drawn up, and her assent to its terms is true, it is difficult to believe that she did not authorise her husband to execute it on her behalf, and this, even if the thumb-mark was fraudulently attached by the husband, would be sufficient to bind her.

Their Lordships must accordingly hold that the document was executed by the appellant.

It remains to be considered whether any further difficulty is raised by the doctrine of champerty, or by the fact that the appellant was admittedly a *pardanashin* lady.

The Subordinate Judge thought that the contract evidenced by the documents exhibits A and A1 was champertous, that the benefit which the respondent was to derive under it was disproportionate to the sum which he was to contribute to the costs of the litigation and the services which he was to render, and that under these circumstances the bargain should be regarded as unconscionable and extortionate. He therefore refused to award to the respondent a quarter-share of the properties recovered, but gave him a decree for Rs. 2,775, as representing the advances he had actually made, together with a lump sum of Rs. 1,000 for services rendered.

The High Court took a different view. The Judges held that the agreement was made *bona fide*, and that its object was not improper: that the risk undertaken by the respondent in what might have been a prolonged litigation was considerable: that the appellant was not in a necessitous condition, and that the whole arrangement partook of the nature of a family agreement. They accordingly came to the conclusion that there was nothing extortionate or unconscionable about it, and they gave the respondent a decree for the quarter-share upon a partition of the properties between him and the appellant.

Their Lordships think that the view taken by the High Court was right. It has long been held that in India agreements to finance litigation in consideration of having a share of the property if recovered are not *per se* opposed to public policy. They may be so if the object of the agreement is an improper one, such as abetting or encouraging unrighteous suits, or gambling in litigation; or their enforcement against a party may be contrary to the principles of equity and good conscience, as unconscionable and extortionate bargains. The appellant's counsel has not pointed to anything in the agreement which is opposed to public policy, and their Lordships are in accord with the High Court in thinking that there was nothing unconscionable or extortionate about the bargain as between the parties.

The law as to disposition of property by *pardanashin* ladies has been discussed by this Board on many occasions. It is for the person claiming the benefit of any such disposition to establish affirmatively that it was substantially understood by the lady and was really her free and intelligent act. If she is illiterate, it must have been read over to her: if the terms are intricate

they must have been adequately explained, and her degree of intelligence will be a material factor, but independent legal advice is not in itself essential : *see per* Lord Sumner in *Farid-un-nissa* v. *Mukhtar Ahmad*, 52 I.A. 342.

In the present case, upon the findings of the Indian courts, which their Lordships have accepted, they think that the burden which is upon the respondent has been discharged. The terms of the documents are of a comparatively simple character. They were discussed with the appellant on the day previous to the execution. She desired the advice of her sister upon one point, which she obtained and followed. She was evidently a lady of considerable intelligence. She had the assistance of her husband and father-in-law. The document which it is sought to enforce against her was read out to her, and she agreed to it. Her defence is not that she did not understand it, or thought that it was of a different character from what it really is, but that the transaction never took place at all.

On the whole, therefore, their Lordships have come to the conclusion that the appeal fails, and should be dismissed, and they will humbly advise His Majesty accordingly. The appellant must pay the costs of the respondent.

In the Privy Council.

VALLURI RAMANAMMA

v.

MARINA VIRANNA.

DELIVERED BY SIR GEORGE LOWNDES.

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