

Vathyam Balarama Sastri - - - - - *Appellant*

v.

Vavilala Vasudeva Sastri - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1947

Present at the Hearing :

LORD SIMONDS
MR. M. R. JAYAKAR
SIR JOHN BEAUMONT

[*Delivered by* LORD SIMONDS]

This appeal from a judgment and decree of the High Court of Judicature at Madras, which reversed a judgment and decree of the Court of the Subordinate Judge of Guntur, raises a pure question of fact and it appears to their Lordships that the only matter for their consideration is whether the appellate tribunal was justified in reversing the judgment of the trial Judge who had had the advantage, denied to it, of seeing and hearing the witnesses.

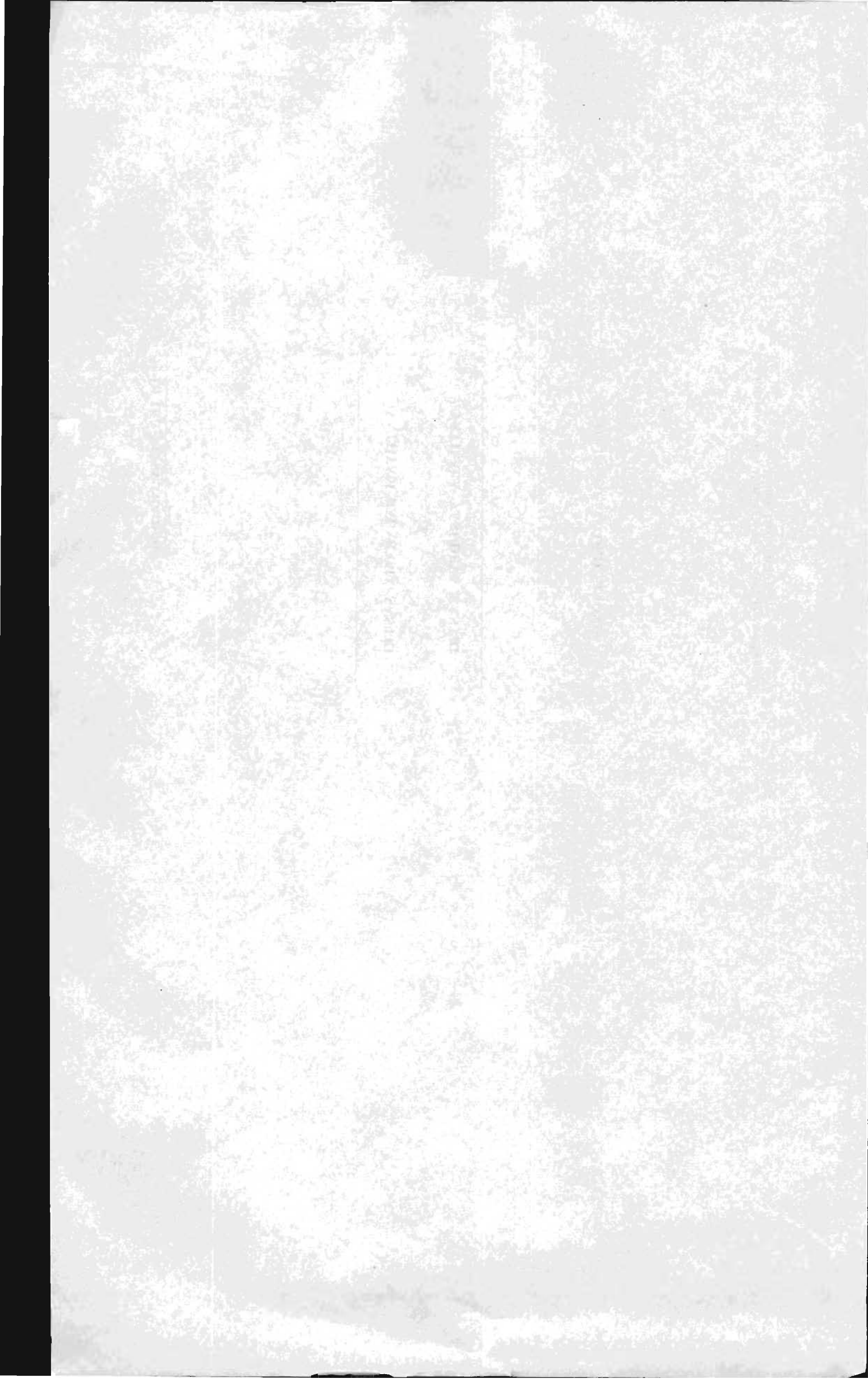
The suit in which this appeal is brought was instituted by the present respondent, who claimed against the present appellant to be entitled to two-thirds of the cash standing to the credit of one Vathyam Verri Janikamma, then lately deceased, at certain banks. This claim was based on an agreement made between the parties dated the 7th March, 1940, which in fact recorded a compromise arrived at between them for the settlement of outstanding disputes in relation to the estate of Janikamma.

The claim was resisted by the appellant on the ground that the agreement was brought about by fraud, misrepresentation, coercion or the undue influence of the appellant's own natural father, Bhogappayya Sastri, and it was rejected by the Subordinate Judge on the ground that the agreement was without consideration and was brought about by the undue influence alleged.

So far as the plea of undue influence is concerned their Lordships have searched the evidence in vain for anything which could justify the conclusion to which the Subordinate Judge came. Apart from the difficulty, a grave one indeed, which faces the appellant under section 16 of the Indian Contract Act, it appears to their Lordships that upon the facts the High Court was amply justified in holding that the appellant had not made out his case.

There remains the question whether any consideration moved from the respondent to support the agreement. This depends upon whether the respondent had a *bona fide* claim to the property which was the subject of the agreement of compromise. It is in their Lordships' opinion clear that he had such a claim. The respondent was a son of Ramalinga Dikshitulu, a brother of Janikamma, and therefore was her nephew. He had lived on terms of affection with her. The appellant had been adopted in 1916 as the son of Janikamma and her husband who had died long before that date. The disputes between him and Janikamma had been serious. She had been born in a wealthy family and had a widow's estate in her late husband's property and she had saved substantial sums part of which she had invested. Here was room for controversy with the adopted son and that there was controversy is beyond doubt, he asserting and she denying that the property was his. In April, 1935, she made a will in which she expressly asserted her right to certain money deposited in the Banks and other property and proceeded to dispose of it. Under the will the respondent was an executor and a beneficiary. In addition to this on the 23rd January, 1940, Janikamma wrote two letters, the one to the Andra Bank at Bandar, the other to the Kistna Co-operative Bank at Masulipatam, requesting that after her death all the fixed deposits standing in her name at the Bank in question should be given over to her nephew, the respondent, with certain further directions in regard to the principal and interest during her lifetime which need not be stated. These letters were given to the respondent for him to take to the Banks but before he did so Janikamma died. Before the Subordinate Judge there was much discussion concerning these letters, their authenticity being challenged by the appellant, and that learned Judge found that they had not in fact been written by Janikamma. The High Court came to a different conclusion and, if it were necessary for their Lordships to determine this matter, they would find it difficult to uphold the finding of the Subordinate Judge notwithstanding that he saw and heard the witnesses, for the reasons that he gives appear inadequate to support the charge that the respondent had fabricated all or any part of the letters. But it is not necessary further to consider this matter, for, the issue being whether the respondent had a *bona fide* claim to the property in question, it is undeniable that he had, apart from the letters, a claim under the will which could only be displaced by the appellant if the latter could show that the property belonged to him, not to Janikamma. That this was an honest claim, which would support the agreement of compromise, appears to be indisputable. But it is at this point, as the High Court have in their Lordships' opinion correctly held, that the learned Subordinate Judge fell into error. For he said (and their Lordships repeat a passage cited by the High Court): "She is said to have made four wills: evidently these were not meant to be operative. The provisions contained in P^s [that is the will in question] differ fundamentally from those in the letters. Thus it is clear that Exhibit P^s was not meant to be operative or enforceable." Upon this the High Court observe that they are quite unable to follow the argument and add that the appellant's counsel had rightly not claimed that there was any force in it.

There was then no justification for holding as the learned trial Judge held that the agreement was without consideration, and, this being so, their Lordships must conclude that the High Court, though the questions raised in the case were substantially questions of fact, were well justified in reversing his decision. For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.



In the Privy Council

VATHYAM BALARAMA SASTRI

2.

VAVILALA VASUDEVA SASTRI

DELIVERED BY LORD SIMONDS

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