

Moravaneni Satuyavathamma Vs Moraveni Rambabu and Another

Court: Andhra Pradesh High Court

Date of Decision: June 13, 2002

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 6 Rule 2, Order 6 Rule 4
Contract Act, 1872 – Section 16, 17
Succession Act, 1925 – Section 63

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: Ramesh Kotikinera, for the Appellant; K. Manga Chary, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.

The unsuccessful plaintiff in O.S. No. 199/81 on the file of Subordinate Judge, Eluru is the appellant. The 1st defendant

in the suit is the 1st respondent. The 2nd defendant, the father of the 1st defendant, died pending suit and the appellant/plaintiff filed a memo on 4-

8-1988 giving up her claim if any as against the 2nd defendant and the suit against the 2nd defendant was dismissed without costs.

2. The parties are referred to as the plaintiff and the 1st defendant as arrayed in the suit for the purpose of convenience.

3. The facts in brief are as follows:-

The plaintiff is the wife of one Venkatramaiah and the 1st defendant is the son of the 2nd defendant and the 2nd defendant being the brother of the

plaintiff's husband. It is the case of the plaintiff that they are issue-less and her husband owned and possessed plaint A and B Schedule properties

and apart from these properties the plaintiff also has been in possession and enjoyment of an extent of Acs.9-20 cents of dry land at Ankanna

Gudem village which she had purchased out of her own funds. It was further pleaded that the relationships between her husband and the

defendants have been always strained and were never cordial. The husband of the plaintiff had got a fracture to his left hand and also left thigh

about 3 years ago when he slipped while feeding the cattle and since then he was bed ridden and was not able to move and he was aged about 75

years and his general health also was not alright and due to his old age he was not able to manage his affairs and the plaintiff was attending to him

and looking after the properties and also the other related matters and she has been cultivating the lands by leasing out the properties to the tenants.

It was also further stated that on 10-6-1976 evening she went to Yellapuram to attend a function leaving her husband to the care of the farm

servant and the relations and on 11-6-1976 her farm servant came to Yellapuram and informed her that her husband was taken away by the

defendants and Moravaneni Satyanarayana and Smt. Kotta Nagamma at about 2 A.M. on 11-6-1976 and immediately she came to Eluru along

with her elder brother Vemula Atchayya and reached Eluru at 9 A.M. and learnt that her husband was put in the house of the 2nd defendant's

son-in-law in Narasimharaopeta, Eluru and immediately she went there along with her brother and found her husband seated in an easy chair and

the village Karanam of Koppaka i.e., Koppaka Ramabrahmananda Rao was preparing a document. Immediately she had questioned them what

document they were preparing in her absence to which the village Karanam replied that he was directed to write a gift deed by the 2nd defendant

and he was drafting the same and when questioned her husband about the said document he pleaded ignorance and had stated that he was

informed that an application for fertilizer was intended to be drafted and then she had taken the document under preparation and had given it to her

husband who immediately had turned it stating that he was not willing to execute any gift deed. It was further stated that the defendants and certain

others intervened and assaulted the plaintiff and then she gave a report in II Town Police Station at Eluru and the Police had sent for the defendants

and others and the 1st defendant came to the Police Station and had promised to handover Venkatramaiah to the plaintiff at her residence and the

Police had not taken any further action. It was also stated that the plaintiff was allowed to take her husband after some time to her residence and

she was informed that defendants 1 and 2 had taken the signatures and thumb marks of her husband on some documents and got them registered

while he was kept in their custody taking advantage of his mental instability and hence she got issued a notice disputing the voluntary execution of

the documents by him and demanding cancellation of the same on 6-9-1976 through an advocate and subsequent thereto in the month of

September 1976 her husband gave a petition to the Superintendent of Police and a copy to the Sub-Inspector of Police through the village Munsif

for protection from the defendants. It was further pleaded the gift deed dated 10-6-1976 and the will dated 15-6-1976 were obtained by the

defendants by exercising undue influence and fraud taking advantage of the old age and also the mental instability of the husband of the plaintiff.

Subsequent thereto, the husband of the plaintiff had passed away and in such circumstances the present appellant/plaintiff had instituted the suit for

cancellation of the registered gift deed dated 10-6-1976 and the registered will dated 15-6-1976 executed by her husband in favour of the 1st

defendant in respect of Plaintiff A and B Schedule properties and for a consequential relief of injunction.

4. The 1st respondent in the Appeal, the 1st defendant in the suit filed a written statement denying all the allegations. It was pleaded that he is the

only son in the family and the other brothers of his father had no children and hence they were all very affectionate towards him. It was further

stated that the allegation that the relationship between him and Venkatramaiah was strained is not correct. However, the fact that Venkatramaiah

had fallen which resulted in a fracture and he was bed ridden was admitted. But however all the other allegations had been denied. It was

specifically stated that Venkatramaiah was in full possession of the mental faculties and he was mentally alert and he was able to distinguish

between good and bad. It was further stated that in the year 1975 itself at the request of the plaintiff the 2nd defendant brought the deceased to his

house and he was looked after well. All the other allegations relating to the fact that the plaintiff went to Yellapuram leaving the deceased in the

care of the farm servant and he was taken away had been specifically denied. The other allegations also had been specifically denied and it was

stated that the gift deed and the will were executed by Venkatramaiah out of his free will and while he was in a sound disposing state of mind and

he also gave a statement before the Joint Registrar, Eluru at the time of registration. It was further pleaded that on 10-6-1976 when the document

was being prepared the plaintiff came, snatched the stamps from the hands of the scribe after a few lines were written and had turned the stamps

and the stamps were picked up and the document was completed and the same was executed by Venkatramaiah on 10-6-1976. The issuance of

notice was admitted but it was stated that the same was not issued under the instructions of one Moravaneni Ananthaiah who is inimically disposed

towards the defendants. No doubt, certain other allegations also had been made relating to the incorrect particulars furnished in the plaint schedule.

5. On the strength of the above pleadings, the following issues were settled:

1. Whether the defendants obtained the gift deed dated 10-6-1976 and the Will dated 15-6-1976 by exercising undue influence and fraud on

Moravaneni Venkataramaiah ?

2. Whether the plaintiff is entitled for the relief of cancellation of the gift deed dated 10-6-1976 as prayed for ?

3. Whether the plaintiff is entitled for the relief of injunction prayed for ?

4. To what relief ?

6. The plaintiff had examined herself as PW-1 and apart from herself PW-2 and PW-3 were examined and Exs.A-1 to A-21 were marked. On

behalf of the defendants, the 1st defendant was examined as DW-1 and the 2nd defendant was examined as DW-2 and examined the attestors

and the scribe of the documents as DW-3 to DW-5 and Exs.B-1 to B-20 were marked. On appreciation of the oral and documentary evidence

the learned Subordinate Judge came to the conclusion that Exs.B-1 and B-6 which correspond to Exs.A-1 and A-2, were not obtained by

exercising any undue influence or fraud and hence the appellant/plaintiff is not entitled to the relief of cancellation of the documents or the relief of

injunction and ultimately dismissed the suit and aggrieved by the same the plaintiff had preferred the present Appeal.

7. Sri Ratnam, the learned Counsel representing the appellant/plaintiff had contended that the husband of the plaintiff had not executed Exs.B-1

and B-6 out of free will or consent and they were obtained by exercising undue influence or by playing fraud in the circumstances explained by

PW-1 and PW-2. The learned Counsel further contended that the husband of the plaintiff was not in a position to move from the bed and even in

view of the version of the defendants, inasmuch as Venkatramaiah was in their house for atleast one year prior to the execution of Exs.B-1 and B-

6 i.e., Exs.A-1 and A-2, they had ample opportunity to exercise undue influence for securing these documents. It was further contended that the

very fact that the entire property had been given away without even reserving life interest and also not providing maintenance to his wife clearly

point out that these transactions are not voluntary transactions. The learned Counsel also had pointed out that notice had been issued in this regard

and the matter was even reported to police. It was also further contended that the attestors of these documents are related to the defendants and

the learned Counsel also had drawn my attention to the evidence of PW-1 and PW-2 and also the evidence of PW-3 and had contended that the

reasons recorded by the Court of first instance for totally rejecting the evidence of PW-3 are unsustainable. The learned Counsel also had

submitted that there are several suspicious circumstances surrounding the will and the 1st defendant being the beneficiary under the will had taken

active participation and the 1st defendant miserably failed to explain why Venkatramaiah thought of giving away all his properties and inasmuch as

these suspicious circumstances had not been explained, it cannot be said that the will is a valid document. Reliance was placed on Smt. Indu Bala

Bose and Others Vs. Manindra Chandra Bose and Another, and Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and

Another, . The learned Counsel further contended that the registration of the will is only a formality and the Court below had not appreciated the

oral and documentary evidence in proper perspective. The learned Counsel further contended that even the voluntary execution of the gift deed

was not established and hence the Court below had totally erred in dismissing the suit.

8. Sri Mangachary the learned Counsel representing the 1st respondent/1st defendant had made the following submissions. The learned Counsel

had contended that the relief prayed for in the suit is cancellation of registered gift deed dated 10-6-1976 and the registered will dated 15-6-1976

executed by Moravaneni Venkatramaiah in favour of the 1st respondent/1st defendant on the ground of undue influence and fraud and for

consequential reliefs. The learned Counsel submitted that the details and particulars of the undue influence or fraud had not been furnished in the

plaint. The learned Counsel also further contended that even if the allegations made in the plaint and also the evidence of PW-1 to PW-3 are taken

into consideration, it cannot be said that the appellant/plaintiff was able to establish either the ground of undue influence or the ground of fraud. The

learned Counsel also had drawn my attention to the portions of the plaint and had contended that the stand taken by the appellant/plaintiff is that

she went to Yellapuram to attend a function on the evening of 10-6-1976 leaving her husband to the care of the farm servant Veeraswamy and

relations and in the morning of 11-6-1976 her farm servant Veeraswamy came to Yellapuram and informed her that her husband was taken away

by the defendants, Moravaneni Satyanarayana and Kotta Nagamma. The learned Counsel also pointed out the inconsistent statements made by

PW-1 and PW-2. The learned Counsel also had drawn my attention to the evidence of PW-3 and had contended that the said witness had given a

report to the police relating to the theft of paddy against the defendants and the police laid a charge sheet in C.C. No. 63/77 on the file of Judicial

First Class Magistrate, Nuzvid and he had figured as a witness in the said criminal proceeding as PW-1. The learned Counsel further submitted

that except the evidence of PW-2 and PW-3 no other evidence had been placed on behalf of the appellant/plaintiff and the trial Court had

recorded clear findings why the evidence of PW-2 and PW-3 cannot be believed and these are all findings of fact recorded on appreciation of

evidence available on record in detail and hence the appellate Court should be slow in interfering with or disturbing such findings. The learned

Counsel also had taken me through the evidence of DW-3, DW-4 and DW-5 and had submitted that the evidence of these witnesses is cogent

and convincing and thus the 1st respondent/1st defendant was able to prove that Ex.B-1 and B-6 were executed by Venkatramaiah voluntarily and

hence the grounds of fraud or undue influence could not be established at all by the appellant/plaintiff. The learned Counsel also had drawn my

attention to the fact that the appellant/plaintiff issued a telegram not to register the documents if any presented by her husband and in view of the

said telegram when Exs.B-1 and B-6 were presented for registration before the Sub-Registrar he had recorded the statement of the husband of the

plaintiff and the certified copy of the same was marked as Ex.B-7 and the said Sub-Registrar who had recorded the said statement is no more. It

was also further contended that on the material available on record it appears that though Venkatramaiah was particular of giving his properties to

the only son of his brother available in the family, the appellant/plaintiff was not a willing party. The learned Counsel also pointed out that though

certain allegations had been made it is pertinent to note that the said Venkatramaiah though was alive subsequent to the execution of Exs.B-1 and

B-6 he had not chosen to challenge the said documents either by instituting a suit nor the said Venkatramaiah made any attempt to execute yet

another will and this crucial aspect also negatives the contention of the appellant/plaintiff and for the said reasons it was contended by the learned

Counsel for the 1st respondent/1st defendant that the appeal is liable to be dismissed with costs.

9. Heard both the counsel and perused the evidence of PW-1 to PW-3 and DW-1 to DW-5 and Exs.A-1 to A-21 and Exs.B-1 to B-20.

10. The following points arise for consideration in this appeal:

(a) Whether the respondents/defendants had obtained the gift deed and the will, Exs.B-1 and B-6 i.e., Exs.A-1 and A-2 by exercising undue

influence and fraud on Moravaneni Venkatramaiah ?

(b) Whether the appellant/plaintiff is entitled to the relief of cancellation as prayed for ?

(c) Whether the appellant/plaintiff is entitled to the other reliefs prayed for in the plaint ?

(d) If so to what relief ?

POINTS (a) to (c):- For the purpose of convenience, these three points can be discussed together. The appellant/plaintiff instituted the suit for

cancellation of the registered gift deed dated 10-6-1976 and registered will dated 15-6-1976 executed by her husband Moravaneni

Venkatramaiah in favour of the 1st respondent/1st defendant relating to the plaint A and B schedule properties on the grounds of undue influence

and fraud and for certain other ancillary reliefs. The execution of these documents, the originals Exs.B-1 and B-6, equivalent to the registration

extracts Exs.A-1 and A-2, by Moravaneni Venkatramaiah, is not in dispute. It is also not in dispute that though an allegation is made that the

husband of the appellant/plaintiff had sent a petition to the Superintendent of Police, marking a copy to the Sub-Inspector through the village

Munsif seeking protection, the fact remains that the said Venkatramaiah as such had not instituted any suit during his life time. Before adverting to

the other details, both oral and documentary evidence, it may be relevant to note the allegations made in the plaint in this regard.

11. It was pleaded by the appellant/plaintiff that on 10-6-1976 evening she went to Yellapuram to attend a function leaving her husband to the care

of the farm servant and relations. On 11-6-1976 her farm servant Veeraswamy came to Yellapuram and informed her that her husband was taken

away by the defendants and Moraveneni Satyanarayana and one Smt.Kotta Nagamma at about 2 A.M. on 11-6-1976. Immediately she came to

Eluru along with her elder brother Vemula Atchayya and reached Eluru by 9 A.M. and learnt that her husband was put in the house of 2nd

defendant's son-in-law Sri Guravaiah in Narasimharaopet, Eluru. Immediately she went there along with her brother and found her husband seated

in an easy chair and the village karanam of Koppaka Ramabrahmanadarao was preparing a document. Immediately the plaintiff questioned them

what document they were preparing in her absence to which the village karanam replied that he was directed to write a gift deed by the 2nd

defendant and that he was drafting a gift deed. When she questioned her husband about the same, he pleaded ignorance and told her that he was

informed that an application for fertilizer was intended to be drafted. The plaintiff took the document under preparation and gave it to her husband

who immediately tore it stating that he was not willing to execute any gift deed. The defendants and others intervened and assaulted the plaintiff and

then she gave a report in II Town Police Station at Eluru. In substance, these are the allegations made in the plaint with a view to substantiate both

the pleas of undue influence and fraud in the execution of the documents in dispute.

12. Apart from the evidence of PW-1, the evidence of PW-2 and PW-3 had been adduced and the trial court had recorded reasons why the

Court was not inclined believe the evidence of PW-3 and also the evidence of PW-2. Be that as it may, as already referred to supra, the main

relief prayed for in the suit is cancellation of documents on the ground of undue influence and fraud. It is needless to say that these expressions

undue influence"" and ""fraud"" are in under Sections 16 and 17 of the Indian Contract Act, 1872. Rule 4 of Order 6 of the CPC dealing with

Particulars to be given where necessary specifies as follows:

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other

cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary)

shall be stated in the pleading

13. In *Bandarupalli Mastanamma being minor represented by the next friend and mother Bandarupalli Nagaratnamma and Others Vs. Ganguri*

Adinarayana and Others, it was held as follows:

The matters which are usually relevant in appraising the proof where a gift is impeached on the ground of undue influence were explained by Lord

Macanaghten in *Mahomed Buksh Kha V. Hosseini Bibi* ILR Cal 684 to be (1) whether the transaction is a righteous transaction, that is, whether is

a thing which a right-minded person might be expected to do; (2) whether it was an improvident act, that is to say, whether it shows so much

improvidence as to suggest the idea that the donor was not master of himself and not in a state of mind to weigh what he was doing; (3) whether it

was a matter requiring a legal adviser and (4) whether the intention of making the gift originated with the donor".

14. In *Syed Sultan Pai Vs. Syed Bikhu Saheb (Deceased by LRs) and Others*, it was held :

Order 6 Rule 4 enjoins that in all cases in which the party pleading relies on undue influence, the particulars thereof have to be stated with

necessary details thereof in the pleading. In this case no such plea has been taken and no issue has been framed. In the evidence, vague suggestions

have been given to the witnesses but they were denied. In the evidence, DW-2 has stated that he was coerced that the corpse would not be

allowed to be taken to the burial ground unless he signed the papers. He states that he raised that plea in the written statement, but no such plea is

taken. Even in his chief-examination he did not state it expressly. It is brought out only in the cross-examination when a suggestion was given to

him. Under these circumstances it must be held that the alleged undue influence which weighed with the lower Court is clearly an afterthought and it

has no legal basis.

15. In *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others*, while dealing with the aspect of the plea of undue influence and giving

particulars in the pleading, the Apex Court held:

Order 6 Rule 4 Civil P.C. provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default

or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in the Appendix,

particulars (with dates and items if necessary) shall be stated in the pleading. The reason of the rule is obvious. A plea that a transaction is vitiated

because of undue influence of the other party thereto, gives notice merely that one or more of a variety of insidious forms of undue influence were

brought to bear upon the party pleading undue influence, and by exercising such influence, an unfair advantage was obtained over him by the other.

But the object of a pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy

to precise issues, and to give notice to the parties of the nature of the testimony required on either side in support of the respective cases. A vague

or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised,

the manner of use of the influence, and the unfair advantage obtained by the other. This rule has been evolved with a view to narrow the issue and

protect the party charged with improper conduct from being taken by surprise. A plea of undue influence must, to serve that dual purpose, be

precise and all necessary particulars in support of the plea must be embodied in the pleading; if the particulars stated in the pleading are not

sufficient and specific the Court should, before proceeding with the trial of the suit, insist upon the particulars, which give adequate notice to the

other side of the case intended to be set up.

16. In Afsar Sheikh and Another Vs. Soleman Bibi and Others, it was held that a separate pleading about undue influence is essential and the

general allegation that plaintiff is a simple old man and reposed confidence in the defendant may not be sufficient to spell out undue influence. While

dealing with this aspect at paragraph-15 it was held:

While it is true that "undue influence", "fraud", "misrepresentation" are cognate vices and may, in part, overlap in some cases, they are in law

distinct categories, and are in view of Order 6, Rule 4, read with Order 6, Rule 2 of the Code of Civil Procedure, required to be separately

pleaded, with specificity, particularity and precision. A general allegation in the plaint, that the plaintiff was a simple old man of ninety who had

reposed great confidence in the defendant, was much too insufficient to amount to an averment of undue influence of which the High Court could

take notice, particularly when no issue was claimed and no contention was raised on that point at any stage in the trial Court, or, in the first round,

even before the first appellate Court.

17. In Swarna Lata Devi Vs. Krishna Iron Foundry and Metal Works (P) Ltd., it was held at paragraph-7 as follows:

.....Then again it is well established that under the mandatory provisions of Rule 4, Order 6 of the Code, particulars of fraud, amongst other

things, have to be given. As has been held by the Judicial Committee general allegations, however strong, are insufficient even to amount to an

averment of fraud of which any court will take notice (See Bal Gangadhar V. Srinivas 19 CWN 729 : AIR 1915 P.C. 7; Ganga V. Tiluckram ILR

(1883) Cal 533 Fraud being an objective fact and, not being a subjective process, known to the parties complaining, particulars thereof must be

given.....

18. The main allegation made by the appellant/plaintiff is that Venkatramaiah was not on cordial terms with the respondents/defendants and taking

advantage of her absence these transactions were entered into and when she was informed by PW-2 she came and had raised an objection. A

serious attempt was made by the counsel representing the appellant/plaintiff to convince the Court that the 1st respondent/1st defendant had been

always playing a dominating and prominent role, being the beneficiary and further due to the old age of her husband Venkatramaiah the 1st

respondent/1st defendant was in a position to dominate and also dictate to Venkatramaiah in consequence of which the documents were brought

into existence and hence the burden is very heavy on the 1st respondent/1st defendant to establish that these documents Exs.B-1 and B-6 were

executed by Venkatramaiah voluntarily. These transactions also were assailed on the ground that they are totally unnatural transactions since

Venkatramaiah had not retained anything nor he had provided atleast maintenance to his wife and in this view of the matter also it cannot be said

that Venkatramaiah executed these documents voluntarily.

19. It is not in dispute that the appellant/plaintiff is in possession and enjoyment of Acs.9-60 cents and no doubt there is some controversy whether

she had purchased the property out of the sale proceeds of the land inherited by her mother or not, but the fact remains that she is having sufficient

property. Most probably this may be the reason which weighed with Venkatramaiah to settle and will away the rest of the properties in favour of

the only male member of the next generation of the family. There is nothing unnatural since it is not in dispute that Venkatramaiah was issue-less

and the 1st respondent/1st defendant is the only male member representing the next generation of the family.

20. To establish the grounds of undue influence and fraud the evidence of PW-2 and PW-3 had been relied upon apart from the evidence of PW-

1. PW-1 no doubt had stated that her husband was bed ridden and he was unable to move and he was aged about 70 years and he was mentally

weak and unsound and she used to manage the affairs of the family and on 10-6-1976 she had left her husband to the care of the farm servant to

attend a function and the next morning she was informed that her husband was taken away by defendants 1 and 2 and some others and

immediately she went to Eluru and found her husband at the house of the son-in-law of the 2nd defendant and by the time she had gone there the

village Karanam was preparing a document and she had questioned the same for which the Karanam had given a reply that he was preparing a gift

deed in favour of the 1st defendant executed by her husband and then her husband had snatched the documents from the hands of the Karanam

and had turned the same and she was not allowed to go through the document and she was not allowed to take her husband and then she gave a

report to II Town Police Station against the defendants and subsequent thereto after one month her husband was brought back to Ankannagudem

and he was kept there for a period of one month at the house of the defendants and subsequent thereto he was brought to his house. Then she had

ascertained what had happened and subsequent thereto they got a notice issued to the defendants and the office copy of the notice is marked as

Ex.A-3 and Ex.A-4 is the reply. PW-2, the farm servant was examined who according to PW-1 had informed about what had happened on the

fateful day. Hence in nutshell and in substance, the plea taken by the appellant/plaintiff is that her husband was taken by force by the defendants

and after taking him by force the disputed documents were brought into existence and hence these documents are not valid documents and are

liable to be cancelled inasmuch as they are vitiated by undue influence and fraud.

21. PW-2 is the farm-servant and his evidence is more or less general in nature. PW-2 had deposed that the husband of the plaintiff was aged 75

years and he was not hale and healthy and while PW-2 was working as a farm-servant under him, he had sustained injuries while giving water to

she-buffaloes and hence he was not able to move and he was bed-ridden and PW-2 and the plaintiff used to attend on him. PW-2 further deposed

that during the period when her husband was bed-ridden the plaintiff had gone to a near-by village and he cannot say how many years back she

had gone to Yellapuram to attend the puberty attaining function in her relations house. PW-2 also deposed that the plaintiff had asked him and one

Kotta Nagamma to attend on her husband and on the day when the plaintiff left Yellapuram at about between 12 mid night and 2 A.M. he heard a

sound and woke up from his bed on hearing some sound and found Kotta Nagamma taking a bamboo stick and when he questioned why she was

taking that stick at that night she informed that the deceased-husband of the plaintiff asked her to bring the bamboo stick and the said Nagamma

also informed her that she was taking the husband of the plaintiff to show him the mango tope in the early hours. PW-2 also deposed that the 1st

defendant was also there and one Venkulu was driving the double bullock cart and the husband of the plaintiff was taken in the double bullock cart

and the next morning when she was informed that the plaintiff's husband was taken to Eluru he proceeded to Yellapuram and informed the same to

the plaintiff and from Yellapuram the plaintiff and the brother of the plaintiff Atchayya and himself came to Eluru and went to the house of the son-

in-law of the 2nd defendant and at about 1 p.m. he was waiting outside the house and the plaintiff and her brother went inside the house and he

was waiting only outside the house and he heard some altercation between the plaintiff and the 2nd defendant. PW-2 also deposed about the

giving of the report to the Police and also to the effect that these families were not in talking terms. In the cross-examination PW-2 admitted that

one Achutamma is the younger sister of the plaintiff and it is true that he is cultivating the lands of Atchutamma. PW-2 also admitted that the 1st

defendant is the only son of the 2nd defendant and that it is true that the plaintiff's deceased husband used to have affection for the 1st defendant.

PW-2 being the farm servant, naturally had supported the case of the plaintiff, but his evidence is general in nature and the particulars and the

details had not been spoken to by PW-2 and hence the trial Court had arrived at the correct conclusion that by the mere evidence of PW-2 it

cannot be said that the appellant/plaintiff had established that the documents in question were brought into existence by exercising undue influence

or by playing fraud.

22. The evidence of PW-3 is also general in nature. PW-3 deposed that he worked under the husband of the plaintiff and he used to cultivate the

lands of Venkatramaiah. PW-3 also deposed about the incident of Venkatramaiah sustaining injury and he further deposed that he learnt that

Venkatramaiah was taken to Eluru and he was not aware what had happened at Eluru. In the cross-examination PW-3 admitted that he had given

a report to police against to the defendants for the theft of paddy and a charge sheet was also filed as against the defendants and the said case

ended in acquittal. The trial Court, on appreciation of the evidence of PW-3 came to the conclusion that this witness is not a trustworthy witness

and after appreciating the evidence of PW-1 and also PW-2 and PW-3 the trial Court had recorded findings that the appellant/plaintiff had

miserably failed in establishing her case. I do not find any special reasons to arrive at a different opinion relating to the appreciation of the evidence

of PW-1 to PW-3 in this regard.

23. The learned Counsel for the appellant however had made a serious attempt to convince the Court that the 1st respondent/1st defendant being

the brother's son and a person in fiduciary position getting benefit, the burden is on him to prove that he did not use that position in obtaining the

documents in question. In NARAYANADOSS Vs. BUCHARAJ AIR 1928 MAD 6 it was held :

.....If it is shown that the parties stood in such a situation as to give rise to confidence between them and that the third party who derives the

benefit was aware of the existence of this relation - if this is shown - the third party is not entitled to retain the security unless he shows that the

party conferring the benefit was a free agent and had independent and disinterested advice. It is not necessary for the party impeaching the

transaction to prove that he was deceived by the person who put himself in loco parentis towards him; nor is it necessary for him to make out that

the third party connived at any actual fraud. The doctrine is the result of the jealousy and solicitude with which Courts of equity watch the interests

of the weaker party where a special confidential or fiduciary relation is established. To sum up (1) if there is a relation which gives rise to

confidence between the parties and if the person in fiduciary position obtains an advantage - where this alone is established and nothing further -

the Court gives relief to the party conferring the benefit unless the other party shows that he did not avail himself of the confidence which subsisted

between the parties. The burden is therefore upon him and if he does not discharge the burden the plaintiff succeeds; (2) when there is a third party

involved the position is not dissimilar. If it is shown that he was aware of the existence of such confidential or fiduciary relation, he is under the

same disability as the party who occupied the position of confidence; that is to say, the Court gives relief to the plaintiff without demanding proof of

fraud or imposition or any specific act of undue influence. It is enough that the third party was aware of the existence of the confidential relation and

the Courts do not insist on proof that he was further aware of the actual exercise of undue influence.

24. In *Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another*, while dealing with the aspect of registration of the will

the Apex Court held:

There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness.

But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting

the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in

such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property

and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if

the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator

or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing

the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered

would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law

reports are full of cases in which registered wills have not been acted upon : (see, for example, AIR 1930 24 (Privy Council); Surendra Nath Lahiri

Vs. Jnanendra Nath Lahiri, and Girja Datt Singh Vs. Gangotri Datt Singh,). Therefore, the mere fact of registration may not by itself be enough to

dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important

circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after

knowing that it was a will the execution of which he was admitting.

25. While dealing with the aspect of the proof of will, suspicious circumstances and the onus lying on the propounder, in the decision referred (1)

supra, it was held:

This Court has held that the mode of proving a will does not ordinarily differ from that of proving any other document except to the special

requirement of attestation prescribed in the case of a will by S.63 of the Succession Act. The onus of proving the will is on the propounder and in

the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as

required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain

them to the satisfaction of the Court before the Court accepts the will as genuine. Even where circumstances give rise to doubts, it is for the

propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the

condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances, or

there might be other indications in the will to show that the testator's mind was not free. In such a case the Court would naturally expect that all

legitimate suspicious should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes

a prominent part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the

propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious

circumstances the Court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations (See Shashi

Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, , H. Venkatachala

Iyengar Vs. B.N. Thimmajamma and Others, ; Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another,).

26. The learned Counsel for the appellant/plaintiff with all emphasis had contended that since the 1st respondent/1st defendant was in a dominating

position deriving the total benefit out of these transactions the burden is on him to establish that the documents in question were executed

voluntarily and there are no suspicious circumstances surrounding the said documents.

27. The question whether a person was in a position to dominate the will or another and whether such person had secured a document by

exercising undue influence is a question of fact to be decided on appreciation of evidence. No doubt, certain circumstances like Venkatramaiah

giving away all the properties even without retaining life interest and without providing any maintenance to his wife had been pointed out. But the

fact remains that the appellant/plaintiff is having sufficient property in her name - whether she had purchased the same or Venkatramaiah had

purchased in her name, as the case may be. The trial Court on appreciation of the evidence let in by the defendants in this regard had recorded

findings that Exs.B-1 and B-6 were executed by Venkatramaiah voluntarily and also these documents were executed by him out of his free volition

in a sound disposing state of mind. It is essential to note that a telegram was issued by the appellant/plaintiff to the Sub-Registrar not to register the

documents if any presented by her husband and in view of the said telegram when Exs.B-1 and B-6 were presented for registration before the

Sub-Registrar, the Sub-Registrar who is no more, at the relevant point of time had recorded the statement of the husband of the plaintiff and the

certified copy of the same is marked as Ex.B-7. It is no doubt true that if other serious suspicious circumstances are there surrounding the will, the

mere registration of the will may not be sufficient and the propounder has to adduce necessary evidence to prove the will in accordance with law.

Apart from Ex.B-7, the evidence of DW-3, DW-4 and also DW-5 - the scribe, is available on record. Apart from this evidence, the evidence of

the 1st and the 2nd defendants as DW-1 and DW-2 also is available on record and both DW-1 and DW-2 had deposed about the voluntary

execution of both Exs.B-1 and B-6 by the deceased Venkatramaiah. The 1st defendant as DW-1 had deposed that on 10-6-1976 his senior

paternal uncle executed a settlement deed in his favour, Ex.B-1. By the time he executed Ex.B-1 the plaintiff's husband used to be with their family

and PW-1 had denied that in the absence of the plaintiff during night they had taken the husband of the plaintiff to Eluru stealthily and obtained

Ex.B-1. DW-1 also deposed that Ex.B-1 was drafted at the house of his brother-in-law and his brother-in-law was Assistant Radio Engineer at

Eluru at the relevant time. The scribe of Ex.B-1 is one Koppaka Ramabrahmananda Rao who was then the village Karanam of Koppaka. DW-1

also deposed that the plaintiff's husband had given instructions to draft Ex.B-1 and he had signed after the contents were read over to him and

after satisfying about the contents of Ex.B-1. After the plaintiff's husband signing Ex.B-1 the attestors had attested Ex.B-1 and subsequent thereto

the scribe had put his signature and the husband of the plaintiff also had seen the attestors attesting Ex.B-1 and the scribe putting his signature and

in the presence of the scribe and the attestors the husband of the plaintiff had put his signature on Ex.B-1. DW-1 also had stated that while Ex.B-1

was being drafted the plaintiff came there and questioned her husband and also the scribe what they were writing and the plaintiff's husband

informed her that he was executing a settlement deed and she had protested and objected for the writing of the will and took away the settlement

deed from the hands of the scribe and tore it and left the torn pieces there and went away and subsequently the torn pieces were posted and the

writing was completed. DW-1 also deposed that there is about Acs.9.00 of land in the name of the plaintiff which was purchased by her husband

in Exs.A-1 to A-9. DW-1 also had deposed that on 15-6-1976, the husband of the plaintiff executed a will bequeathing all his properties in his

favour and the scribe of Ex.B-1 settlement deed also is the scribe of the said will and the same was marked as Ex.B-6. DW-1 also deposed that

the plaintiff's husband himself gave instructions to draft Ex.B-6 will and the contents of Ex.B-6 will were read over and explained to the executant

and after satisfying the contents of Ex.B-6 he signed the will in the presence of the attestors and the scribe and the attestors and the scribe also

signed the will in the presence of the executant and the husband of the plaintiff while executing Ex.A-6 was in a sound disposing state of mind and

the same was executed between 10 A.M. and 12 noon and on the same day at about 3 P.M. Ex.B-6 will and Ex.B-1 settlement deed were

registered together. DW-1 also deposed that when his senior paternal uncle presented Exs.B-1 and B-6 for registration the registering authority

informed him about the plaintiff giving a telegram asking him not to register the documents and in the circumstances the registering authority

recorded the statement of Venkatramaiah and Ex.B-7 is a certified copy of the said statement and the Sub-Registrar who had registered Exs.B-1

and B-6 and who recorded Ex.B-7 statement is no more and subsequent to the execution of Exs.B-1 and B-6 Venkatramaiah was admitted in the

hospital and the Doctor gave a certificate evidencing that he treated Venkatramaiah which is marked as Ex.B-8 and DW-1 also deposed that at

that time the plaintiff had never visited him and ascertained his welfare. DW-1 also had stated that Venkatramaiah was with them and they had

cordial relationship with the said Venkatramaiah. DW-1 also deposed about the notice marked as Ex.B-10 and had stated that they have got

issued the said notice through her advocate as if it was issued by Venkatramaiah for which a reply was given, marked as Ex.A-4. The land revenue

receipts and the house-tax receipts were marked as Exs.B-11 to B-16 and DW-1 also had deposed relating to the several other aspects and

Ex.B-17 and B-18 also were marked. DW-1 was cross-examined at length. But however in the cross-examination except the suggestions made

which had been denied by DW-1 specifically nothing important so as to vitiate or disbelieve Exs.B-1 and B-6 had been elicited. The evidence of

DW-2 is to the same effect and corroborative of all material particulars in support of the evidence of DW-1 which need not be repeated again.

Apart from the evidence of the defendants as DW-1 and DW-2 the evidence of DW-3, DW-4 and DW-5, if carefully gone through the evidence

relating to the voluntary execution of Exs.B-1 and B-6 appear to be natural and also convincing. As already pointed out even prior to the

registration, inasmuch as a telegram was given by the appellant/plaintiff, the Sub-Registrar had taken precautions to record the statement of the

deceased Venkatramaiah and this is a strong circumstance in favour of the voluntary execution of Exs.B-1 and B-6 by the deceased

Venkatramaiah. Apart from Ex.B-7, DW-3 - an attester, had deposed that he was present at the time of the execution of these documents and the

witness also had deposed the details and the particulars about the execution of Exs.B-1 and B-6. DW-3 deposed that his mother-in-law's mother

and the plaintiff's mother are sisters and the husband of the plaintiff Venkatramaiah during his life time executed a settlement deed and also a will

subsequent thereto and the husband of the plaintiff had sent a word to him before executing the settlement deed and the will and he was present

when they were executed. DW-3 also deposed that on the message sent by Venkatramaiah he came to Eluru at about 8.30 A.M. and he went to

the house of the 2nd defendant's son-in-law where the 1st defendant, the village Karanam and also one Moravaneni Satyanarayana were present

and Venkatramaiah also was present and Venkatramaiah asked Koppaka village Karanam to draft a document and he gave particulars on a piece

of paper to him and he told them that he will go to bazaar and he will return after some time and asked them to write the document in the meantime

and by 10 or 10.30 A.M. he returned from bazaar and he was informed that the document was not completed because the plaintiff came there and

had torn the document and they had pasted the torn pieces and had completed the document and he was there till the afternoon and in the

afternoon the document was completed and after the document was completed the scribe, the village Karanam of Koppaka read over the contents

to Venkatramaiah and Venkatramaiah after having satisfied about the contents of the document had signed the document in his presence. After

Venkatramaiah signed, DW-3 and another Moravaneni Satyanarayana had attested the same. He did not see whether the scribe put his signature

after they had attested the document. DW-3 also deposed that DW-3 and other attestor attested Ex.B-1 in the presence of the executant

Venkatramaiah and the scribe and subsequent thereto four or five days thereafter Venkatramaiah executed the will and he himself gave instructions

to draft the will at the Sub-Registrar's office, Eluru and the contents of the will were read over to the executant Venkatramaiah and Venkatramaiah

signed the will and DW-3 and one Moravaneni Satyanarayana had attested the will and the village Karanam was the scribe of the will and after the

attestors attested the will the scribe had put his signature and the attestors had attested the will in the presence of the executant Venkatramaiah and

Venkatramaiah signed the will in the presence of the scribe and the attestors and Ex.B-6 is the said will. DW-3 also had deposed that he had

identified Venkatramaiah before the Sub-Registrar and had put his signature in Ex.B-1 and B-6 as identifying witness also and Venkatramaiah was

in a sound disposing state of mind at the time of execution of both Exs.B-1 and B-6 and he himself gave the instructions. Though several

suggestions were put to him suggesting about playing of fraud or exercising undue influence, they had been denied by DW-3 and his evidence is

natural and convincing. DW-4 - Moravaneni Satyanarayana also had deposed to the same effect relating to the execution of the documents Exs.B-

1 and B-6 and he was also an identifying witness of Exs.B-1 and B-6 and apart from supporting the evidence of DW-3 on all material particulars

relating to the attestation of both Exs.B-1 and B-6, DW-4 also had specifically stated that on the date of registration of Exs.B-1 and B-6 the Sub-

Registrar asked them to go out and recorded the statement of Venkatramaiah and Venkatramaiah was hale and healthy and he was in a sound

disposing state of mind when he had executed Exs.B-1 and B-6. In the course of the cross-examination it was suggested that these documents

were obtained by undue influence and fraud and it had been denied. Apart from the evidence of DW-3 and DW-4, the evidence of DW-5, the

scribe of the documents also is available on record. DW-5 had deposed that Venkatramaiah himself gave instructions to draft the settlement deed

and one day prior to the execution of the settlement deed Venkatramaiah sent a word to him asking him to come to Eluru to write a document and

the person who came to him also informed that Venkatramaiah intended to execute settlement deed of some specified lands and he asked him the

stamp duty payable on the said document and then he told him the stamp duty payable and also informed him to purchase the stamps by the time

he go there. The next day he came to Eluru at 8.30 A.M. and Venkatramaiah was at the house of DW-2's son-in-law and after he went there after

receiving the instructions from Venkatramaiah he began writing the settlement deed and some time later the plaintiff came there and asked him to

stop writing the document for some time and as she intended to talk to her husband Venkatramaiah and then he stopped writing and kept the

stamp papers with him. Then she questioned why he was executing the settlement deed and she also asked him not to execute the settlement deed

and she caught hold of his hands and asked him to follow her. Then Venkatramaiah told her that he was willing to execute the settlement deed and

he refused to follow her and asked her to go away and meantime some neighbours gathered there. At that time the plaintiff took away the stamp

papers from him and torned them and threw the pieces on the ground and went away saying that she will see how the settlement deed will be

registered. Then it was about 10.30 or 11 A.M. Then DW-5 told that he had to go for lunch and informed that he will come in the afternoon and

went to his brother's house. Again after finishing his food at his brother's house he went there at about 2.30 or 3 P.M. and by then the torn pieces

of the stamped papers were collected and pasted and he completed the document and he read over the contents of the settlement deed to

Venkatramaiah and Venkatramaiah having satisfied with the contents signed the document and DW-3 and DW-4 attested the document and after

DW-3 and DW-4 attested he had put his signature as scribe. Since it was 5 p.m. the settlement deed could not registered on that day and

Venkatramaiah asked him to come again four days thereafter to get Ex.B-1 registered. After four days he came to Eluru and Venkatramaiah also

requested him to write a will as he intended to execute the said document and Venkatramaiah gave instructions to draft the will and accordingly he

had written the will and read over the contents of the will to the executant and then Venkatramaiah had signed it and DW-3 and DW-4 had

attested the will and later DW-5 had put his signature as scribe. DW-5, the scribe and the attestors had seen while Venkatramaiah signed the will

Ex.B-6 and then the attestors and the scribe had put their signatures in the presence of Venkatramaiah and Venkatramaiah was in a sound

disposing state of mind while executing Exs.B-1 and B-6 and there was no pressure or undue influence on Venkatramaiah to execute Exs.B-1 and

B-6. In the cross-examination of DW-5 except putting certain general questions and also putting certain suggestions nothing important had been

elicited so as to doubt the veracity of this witness.

28. Thus the evidence of DW-3, DW-4 - the attestors of both Exs.B-1 and B-6 and the DW-5 - the scribe, is clear, categorical and convincing

relating to the voluntary execution of Exs.B-1 and B-6 by the deceased Venkatramaiah and hence it cannot be said that these documents came

into existence in the circumstances stated by the appellant/plaintiff. In the light of the clear oral and documentary evidence available in favour of the

1st respondent/1st defendant it cannot be said that there are any suspicious circumstances surrounding the execution of the documents in question

or it cannot be also said that the 1st respondent/1st defendant had exercised any undue influence or played any fraud in obtaining these documents.

The findings recorded in this regard by the trial Court on appreciation of oral and documentary evidence deserve no disturbance by the appellate

Court.

Point (d):- In view of the findings recorded in detail above while answering Points (a) to (c) I am of the considered opinion that the Appeal is

devoid of merits and accordingly the Appeal is dismissed, with costs.