

1900.
 KACHU
 v.
 LAKSHMAN-
 ING.

no such discretion in regard to past profits, and if the decree was silent, no second suit can be maintained for the same. The Allahabad High Court disapproved the decision in *Ramabhadra v. Jagannatha*⁽¹⁾, which cannot be reconciled with the rulings of the other High Courts on this point. This review of the authorities shows that, as far as the present case is concerned, there is a general agreement of the High Courts of Bombay, Calcutta and Allahabad on the point that when a claim for past profits is made in the former suit and inquired into, and the finding recorded that there was a balance due to plaintiff, but no particular sum was fixed by the decree, no second suit can be maintained by reason of the bar created by section 13, Explanation III, and the plaintiff's obvious remedy was to apply for review to the first Court or appeal to the District Court. As he failed to do this, his present claim was properly held by the District Judge to be not-maintainable. In this view I would confirm the decree of the District Court and dismiss the appeal with costs.

Decree confirmed.

(1) (1890) 14 Mad., 323.

APPELLATE CIVIL.

Before Mr. Justice Fulton and Mr. Justice Batty.

1900.
 July 25.

BHIMBHAT (ORIGINAL DEFENDANT), APPELLANT, v. YESHWANTRAC
 (ORIGINAL PLAINTIFF), RESPONDENT.*

Undue influence—Sale—Inadequacy of consideration—Contract—Voidable contract—Contract Act (IX of 1872), Sec. 16.

Inadequacy of consideration in conjunction with the circumstances of the indebtedness and ignorance of the vendor are facts from which a Court may infer the exercise of undue influence.

SECOND appeal from the decision of T. Walker, District Judge of Dhárwár.

Plaintiff sued to set aside a deed of sale passed by him to the defendant, on the ground that the deed was obtained from him by defendant by undue influence.

*Second Appeal, No. 636 of 1899.

Plaintiff was an illiterate agriculturist heavily indebted to defendant, who was a money-lender.

Plaintiff alleged that he owed to defendant Rs. 1,400 on three mortgage-bonds; that the defendant pressed him for payment; and that as he had no means to satisfy the debt, he passed a sale-deed on 12th July, 1896, of certain lands for Rs. 2,000; that this sum was made up of the mortgage-debt of Rs. 1,400 and two other debts of Rs. 300 each due to other creditors which defendant undertook to pay to those creditors. He further alleged that there was an oral agreement by which defendant had agreed to reconvey the property to him if he repaid Rs. 2,000 within three months from the date of the execution of the deed; that he had offered to do so within the stipulated time, but defendant refused to accept the offer.

Defendant contended that the transaction was an out-and-out sale, and that he had not used any undue influence to obtain the deed of sale.

The Court of first instance held that the consideration for the sale was inadequate; that the defendant had taken undue advantage of his debtor's position, and had obtained the sale-deed by undue influence. It, therefore, passed a decree directing that, if the plaintiff paid Rs. 1,400 to defendant within three months, the sale-deed should be cancelled.

In appeal, the District Judge upheld this decision.

Against this decision the defendant preferred a second appeal to the High Court.

V. G. Bhandarkar, for *V. K. Bhatavdekar*, for appellant.

N. P. Patankar, for respondent.

FULTON, J.:—The plaintiff, who was indebted to the defendant No. 1 to the amount of Rs. 1,400, alleges that he was pressed for payment, but having no money he executed a sale-deed of certain land for Rs. 2,000—made up of the above mentioned item of Rs. 1,400 and two other debts of Rs. 300 due to defendant No. 2 and one Rudrapa which defendant No. 1 undertook to repay. He further says that there was an oral agreement by which the first defendant agreed to return the deed of sale if plaintiff repaid

1900.

BHIMBHAT
v.
YESHWANT-
RAO.

1900.

B IMBHAT
v.
YESHWANT-
RAO.

Rs. 2,000 within three months from the date of execution of the deed.

The District Judge has not recorded any finding as to the oral agreement, but has held that the execution of the deed of sale was induced by undue influence. It was argued before us that there was no evidence to support this finding, but we are unable to accept this contention. The Judge has found that the plaintiff is an ignorant Kunbi heavily indebted to the first defendant who is a Bráhmín sávkár; that the consideration is very inadequate, the land being worth from Rs. 3,000 to 5,000; that the debts due to defendant No. 2 and Rudrapa were not paid off by the plaintiff; and that within a very short time the plaintiff offered full payment to the first defendant. On these facts the Judge found that the first defendant had used undue influence to compel the plaintiff to pass the deed of sale. The question whether the relations between the parties were such that one of them was in a position to dominate the will of the other, and used that position to obtain an unfair advantage over the other, was one of fact, with the finding on which we could only interfere if there were no evidence to support it. The law in regard to undue influence is very clearly explained in section 16 of the Contract Act as recently amended, but we do not think the law as now defined differs in substance from that laid down in 1866 by Westropp, J., in *Kedari v. Almarambhat* (1). Inadequacy of consideration in conjunction with the circumstances of indebtedness and ignorance were facts from which it would have been as permissible before the amendment of the Contract Act to infer the use of undue influence as it would be since that amendment. In the present case we think the inference drawn by the Courts below was reasonable, for it is difficult to imagine why a Kunbi cultivator should have sold his land for a sum far below its value unless he were unduly influenced by the necessities of his position and the pressure of the creditor.

If there was an oral agreement for the return of the sale-deed on repayment of the money within three months, the grounds for believing that undue influence had been used would be all the stronger, for it would be difficult to suppose that any sensible

(1) (1866) 3 Bom. H. C. R. (A. C. J.), 11.

man, if free to act as he chose, would consent to record in writing the part of the agreement which if unqualified would deprive him for ever of his land, and to leave to the uncertainties of oral testimony the promise to return the sale-deed if the money were paid within three months. The proposition has only to be stated to raise a strong feeling that the man who is shown to have acted in this way cannot have been acting of his own free will.

It was urged that the plaintiff should be required at least to pay Rs. 1,700 to the first defendant and not merely Rs. 1,400, as the second defendant admitted that he had received his Rs. 300 from the first defendant through the plaintiff, but the Courts below have found that it is not proved that the first defendant supplied the money to pay defendant No. 2. The District Judge indeed doubts whether defendant No. 2 was paid at all, and points out that as no bond has been returned, the plaintiff is in no way protected. The second defendant has not been made a party to this appeal or to the appeal to the District Court, and will, therefore, not be bound by any decree which we may pass. Consequently as it is not proved that the plaintiff has been discharged of this debt to defendant No. 2, we cannot revise the decision of the Courts below on this point.

We vary the decrees of the Courts below by allowing the plaintiff three months from this date within which he may pay the sum of Rs. 1,400 to the first defendant, and in other respects we confirm those decrees with costs.

Decree varied.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Ranade.

VINAYAK VITHAL BHANGE AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* GOVIND VENKATESH KULKARNI (ORIGINAL PLAINTIFF), RESPONDENT.*

1900.
July 31.

Hindu law—Widow—Alienation by widow of land inherited from her husband—Reversioner—Consent of reversioner to alienation—Subsequent claim by son of consenting reversioner to set aside alienation.

One Govind Bhagwant died, leaving him surviving a widow Radhabai, a sister Bhimabai and her son Venkatesh. Radhabai alienated to the defendant

* Second Appeal, No. 201 of 1900.