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PARTICULARS OF UNDUE INFLUENCE IN PLEADINGS.

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ABSTRACT:

Pleadings are an essential part of procedural laws which direct the course of any proceeding. By laying the foundation of a case, pleadings help in presenting the facts of a case before the court and also provide notice to the opposite party. The Civil Procedure Code (1908) in Order 6 and Order 7 lays down the essential components that need to be mentioned in pleadings in a very broad manner. However, as different cases entail different factual complexities, the importance given to specificity of facts may vary depending on the nature of the facts involved in a case. Greater importance may be given to specificity of facts in certain cases owing to the intangible nature of such facts which leaves room for subjectivity. This study thus explores the nature of specificity required for the pleading of undue influence. Describing the origin and objective of pleadings, the study proceeds to state the meaning of 'particulars' as provided for in the C.P.C. Further, the study contains brief descriptions of three landmark cases on the pleading of undue influence including the case of Ladli Prasad (1963), wherein the Supreme Court has rejected pleadings of undue influence on grounds of insufficient particulars. In its conclusion, the study points out the existing state of ambiguity with regard to mentioning of particulars in pleadings and attempts to bring out the key particulars that need to be included in pleadings related to undue influence.

I) INTRODUCTION:

The claims for 'rights' guide the search for justice and sow the seed of disputes. The settlement of such claims in the modern litigation system is dependent on the procedures followed by the courts and the presentation of such claims and assertions before the courts. The procedures to be followed in civil litigation have been laid down in the Civil Procedure Code, 1908 (C.P.C). In its current amended form, the Code seeks to preserve the principles of natural justice and speedy justice in the procedure laid down by it. Meeting these objectives of the code requires high standards of accuracy in the pleadings framed by litigants as well as in the judgments of courts. Attaining the benchmark of these standards requires due attention to be given to the facts presented and the precedents applicable, by the litigating parties.

In light of the above requirement in litigation, this article studies the concept of pleadings with focus on pleadings in the case of undue influence. The concept of undue influence is an important defence in the law of contracts (Section 16 of Indian Contracts Act, 1872) and thus this article provides an account of a few related cases *vis a vis* the nature of pleadings required in these cases.

It is not possible to lay down a blueprint of the particular facts required in matters involving subjective influences. The degree to which facts need to be stated to make the allegations appear plausible, especially in cases involving the need to ascertain the state of mind of the plaintiff or the intention of the defendant was discussed in the case of *Ashcroft v. Iqbal*¹ and this discussion brings to light the ambiguities that may exist while determining the relevance of facts to be added to the pleadings of a case. The decisions of the Supreme Court of India which are analysed herein aim to establish the checks that are required while framing pleadings involving such a plea.

II) PLEADINGS: MEANING, ORIGIN AND OBJECTIVES:

II.I) MEANING OF PLEADINGS:

The modern system of pleadings in India derives its original identity from the pleading reforms of the middle and the latter part of the nineteenth century in the system of common law pleading. The system of pleading developed in the English courts of chancery and likewise applied in the equity courts of the country which caused it to be termed as “equity pleading”. The process of litigation ensues a chain of claims and counter-claims. The parties to a dispute lay their claims on the bed of facts that need to be communicated to the Court in a clear manner. The issues of a case determine the direction of the proceedings. The presentation of such issues before the adjudicatory body may be done either in oral or written form. The oral form of the presentation includes representation by a pleader and oral arguments. The submission of written material includes the exchange of the plaint and the written statement between the disputing parties. This written form of the facts and contentions stated by each party together compose what is known as pleadings.²

¹ No. 07-1015, 490 F. 3d 143.

² MULLA, CODE OF CIVIL PROCEDURE 804 (Lexis Nexis, 15th Ed.).

Black's Law Dictionary defines pleadings as "a formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials or defences."³

A pleading is described as a statement of all material facts upon which a party to a suit seeks to rely. The statements made are in legal form and they disclose the cause of action or the defences relied upon in a suit. The aim of pleadings has shifted from identifying and stating the issues of the dispute to providing a notice to the opposite parties about the facts relied upon. The framing of pleadings requires being comprehensive as it is through the pleadings that the dispute is conveyed to the court. The pleadings lay the foundation for the ascertainment the facts which will guide the course of the proceedings and influence the case outcome.

The constituents of pleadings include the plaint filed by the plaintiff and the written statement filed by the defendant.⁴ Reliefs can only be granted on the grounds mentioned in the pleadings.

II.II) ORIGIN OF PLEADINGS:

The origin of pleadings can be traced to the Roman system of justice. The development of procedures during the Roman era can be studied in three stages. The first stage relates to the prevalence of the five forms of legal action called the *legito actio*. This stage was characterised by a high degree of formalism wherein an individual was required to fit his claims within either of the category of pleadings available depending on the nature of claims. Here the person was expected to abide by the scope of the set categories of wrongs which he could claim against through oral pleadings.⁵

Under this system, the plaintiff would have to modify his case to fit his claims in a readymade set of claims which led loss of the unique nature of the claim. The particulars of the case were lost in this process. This procedure was restricted to litigation between citizens alone. Added to the shortcoming of this system was the bar on the appearance of any representative for the litigant. The rigidity of this system was overcome with the introduction of the formulary system around 242 B.C. This system was based on the role of a *praetorian*,

³ BLACK'S LAW DICTIONARY 3658 (8th ed.)

⁴ Bir Singh v. Kishan Chand, AIR 2007 HP 24.

⁵ Charles E.Clark, *History, Systems and Functions of Pleading*, 11 VIRGINIA LAW REVIEW 517 (1925).

who was the authority appointed to deal with disputes involving aliens.⁶ In course of his dealings with the aliens, the *praetorian* is likely to have adopted the procedure that was used for citizens in solving disputes. Thus, it was the *praetorian* who would fit the claims of the litigants in the categories provided for under *legis actio*.⁷

Reforms in procedure and substantive law came when this system allowed the presentation of events in the pleadings. This change was a result of the praetorian's proclamation to allow the stating of events that could support the plaintiff's right to legal action. The description of the acts provided by the plaintiffs would then be categorised by the praetorian who would also simplify the language of the intentions before the presentation of the case to the judge. Gradually, the power of the praetorian came to take the form of an administrative process as new laws relating to the regulation of procedure came to replace the powers of the praetorian. The developments in the Roman procedural law seeped into the common law courts of England with the Norman Conquest in the late 19th century.⁸

However, this penetration of the Roman system was not the starting point of pleadings in England. The practice of pleadings is known to have existed in the form of oral pleadings in oral which was presented during the trial in open courts by the parties. This system transformed between the 15th and 17th century as the role of pleaders gained importance in the drafting of pleadings. Such written pleadings would be copied on the rolls of the courts to enable the parties to obtain judgement prior to the verdict of the jury. This system was replaced with the filing of pleadings in issue books in England which has today become the practice of maintaining pleadings as a part of the records based on which judgment is delivered. The issuance of writs by the Kings courts in England in case of injury to the plaintiff so as to give notice to the defendants also played an important role in the development of pleadings.⁹

II.III) OBJECTIVES OF PLEADINGS:

The role of pleadings in any proceeding is to define the issues which direct the case. By providing a record of facts pleadings help in the adjudication of a matter. The rules of pleadings clarify that pleadings does not discuss the evidence but only states material facts.

⁶ Ernest Metzger, *Litigation*, THE CAMBRIDGE COMPANION TO ROMAN LAW 272, 275-276 (David Johnson, 2015).

⁷ *Id.*

⁸ *Supra* note 5.

⁹ A.N SAHA, CODE OF CIVIL PROCEDURE 1457 (Premier Publishing House, 8th Ed.).

This means that pleadings do not supplement the evidence to be produced and rather it helps give a context to the evidence to be produced.¹⁰

Pleadings help in constraining the scope of the proceedings and set the boundaries for the adjudication of the courts. Pleadings also present both the parties with the possible questions, defences and nature of the evidence that is likely to be contested during the proceedings. Pleadings also help the courts to ensure that the reliefs sought are granted only after due consideration is given to all matters affecting the interest of both parties to a suit.¹¹ This role of pleadings affirmed in the case of *Gulabrao Balwant Rao Shinde*,¹² where the Supreme Court set aside a ruling of the High Court granting ownership rights in lieu of maintenance claimed by the appellant where no such claim of maintenance was stated in the pleadings of the Appellant. In the words of Charles Clarke, “*Pleading should perform the office only of aiding in the enforcement of substantive legal relations.*”

III) PARTICULARS IN PLEADINGS AND THE GOVERNING

RULES:

The drafting of pleadings is to be done as per the rules laid down in C.P.C and will necessarily follow the application of Order 7, Rule 1, which lays down the particulars to be included in a plaint. The basic particulars include the name of the Courts, the details of the plaintiff and defendant,¹³ and relevant facts. The facts included must show the cause of action, the applicability of the Court’s jurisdiction, the reliefs claimed by the plaintiffs and the amount of set-off if any. The plain should also be accompanied with a statement of value.

This order further provides for the details required in suits of different nature including money suits, suits relating to immovable property, and representative suits. It is also laid down that if different relief has been sought on different grounds, each of the grounds should be specifically dealt with in the pleadings.¹⁴

The facts sought for under this Order are to be in line with the rules of pleadings; this means that the facts pleaded should be material to the case at hand and should not deviate from the issues being adjudicated. The facts stated by the plaintiff should be comprehensive in terms of proving the right over a claim but this does not extend to the inclusion or minute

¹⁰ *Supra* at 1459.

¹¹ Dr. AVTAR SINGH CODE OF CIVIL PROCEDURE 75 (Central Law Publication, 3rd Ed.).

¹² AIR 2003 SC 160.

¹³ O.7, Rule 1 (b) and (c). C.P.C.

¹⁴ *Id* Rule 8.

specifications for corroboration of evidence itself as facts. This distinction is maintained in the distinction between *facta probantia* (Supporting facts) and *facta probatia* (facts that require proof).

Similarly, the pleadings of the defendant should not be restrained to mere denials but should include the specifics of the defences claimed. Particulars are provided to disclose what one party intends to prove against the other; how the party intends to prove his case is a matter of evidence. Particulars stated with due consideration to the above principles help in narrowing down the scope of the suit and limiting inquiry in a trial.¹⁵

III.I) NEED TO DEFINE PARTICULARS:

The distinction between evidence and a material fact was pointed out in the case of *Firestone v. Smith*.¹⁶ In this case, the plaintiff alleged that the defendant made defamatory comments about the plaintiff in a conversation broadcast over the defendant's car radiotelephone. When the Plaintiff in his plea sought information about the person making the comments and the background circumstances of the comment, the Court upheld the defence of the defendant that the information called for by the Plaintiff's call was in the nature of evidence and not particulars.

Ascertaining the distinction between material facts and particulars, the Court held that material facts refer to facts of primary nature upon which the parties set up the case to prove the cause of action or defence. Particulars refer to details that refine these facts to provide a clear picture of the case. "Particulars ensure the conduct of a fair trial and would not take the opposite.

The line between particulars and material facts cannot be drawn in a very definite manner. Similarly, the distinction between the primary facts and supporting facts may not always be clear. Thus it is important to probe into judicial rulings to overcome the ambiguity.

IV) JUDICIAL VIEW ON PARTICULARS OF UNDUE INFLUENCE:

Order 6, Rule 4 specifies the particulars that need to be mentioned in the pleadings with specific reference to cases where the parties rely on misrepresentation, fraud, breach of trust etc. It states that such pleadings require particulars in addition to the particulars sought in the

¹⁵ P.C MOGHA, LAW OF PLEADINGS IN INDIA 66 (Easter Law House, 18th Ed.).

¹⁶ Firestone v. Smith, [1991] B.C.J. No.2660.

general form of pleadings. This has been done with the purpose of providing notice to the opposite party with the details of the incidents stated in the pleadings. If the pleadings allege incidents of misconduct, which require the state of a person's mind to be understood, it is not required to give particulars regarding one's state of mind as this cannot be made subject to any proof. Such state of mind or intentions may only be plainly alleged.¹⁷ This rule distinguishes the state of mind of a person from the acts through which such intention is given effect. In case of any act which has been physically carried out, the particulars of the act need to be specifically stated.¹⁸

The following judgements lay down the need to specify particular incidents and acts in the pleadings:

A) Ladli Prasad Jaiswal v. Karnal Distillery Co., Ltd., & Ors.¹⁹:

➤ **BRIEF FACTS:**

- In this case, an appeal was filed in the Supreme Court against the judgment of the Division Bench of Delhi High Court. The case at hand was related to the passing of board resolutions by the directors in which, the plaintiff (Ladli Prasad) pleaded that the resolution was passed under undue influence exercised by the defendant. The Plaintiff, in this case, was the Kartha of the Hindu joint family which owned the distillery business.
- The pleadings of the defendant only included “that the plaintiff was in possession of the books, and assets of the Company; that he used the funds of the Company for litigation, and that taking full advantage of his position the plaintiff succeeded in coercing the defendants to submit to his dictation.”
- On the presentation of this pleading before the subordinate court, the judge held that the resolution which was passed as alleged was void due to the undue influence executed by the defendant. However, in an appeal against this judgement before a single judge- bench of the High Court, the High Court held that the judge of the subordinate court had travelled beyond the scope of the pleadings as no particulars about the incidents of any pleadings as no particulars regarding any incident showing such undue influence was submitted in the pleadings.

¹⁷ Order VI, Rule 10.

¹⁸ *Supra* note 15 at 71.

¹⁹ 1963 AIR 1279.

- This decision of the single judge bench was in a letter-patent appeal, overturned by the double judge bench which upheld the finding of the lower-court. The matter was further taken in appeal before the Supreme Court.

➤ **OBSERVATIONS OF THE SUPREME COURT:**

- Considering the ruling of the District Courts on the point of lack of particulars to make out a case of undue influence, the Supreme Court relied on the judgement of the single-judge bench of High Court.
- The Supreme Court validated the reasoning of the single judge bench and held that the decision of the District Court was not based on any evidence and that the defendants (except one) have also not appeared before the court for cross-examination.
- The Supreme Court observed that the ruling of the division bench should have been based on the independent review of evidence done by the single judge bench of High Court. The reliance of the double-judge bench on the facts including- the position of the original defendant being *in loco parentis* over the defendants 2-5 and that being the Kartha and the elder brother the of the defendants the appellant is said to have wielded undue influence was not accepted as sound reasoning as such defence has not been mentioned in the pleadings.
- Stating its view the Court observed:

“ It is true that the plaintiff refused 'to accept the validity of that resolution, and declined to hand over management of the affairs of the Company to Shanti Prasad, but that does not establish that he was in a position to dominate the will of the defendants. Again the transaction cannot be called unconscionable.”

Thus, the Supreme Court restored the order of the single judge bench of High Court on the ground that the pleadings made were not given sufficient particulars of the instances or facts that show undue influence by the Appellant.

B) Subhas Chandra Das Mushib v. Ganga Prasad Das Mushib And Ors.²⁰

➤ **BRIEF FACTS:**

- In this case, a suit was instituted to declare a settlement deed executed by a father (who was then dead) in favour of the plaintiff's sister, brother and brother's sons as void on the grounds of undue influence.

²⁰ 1967 AIR 878.

- The trial court dismissed the suit but on appeal, the High Court took into consideration the old age of the donor and proceeded to shift the burden of proving the absence of undue influence on the respondent. The High Court then held that the settlement made was under undue influence.
- The original plaintiff then approached the Supreme Court.

➤ **OBSERVATIONS OF THE SUPREME COURT:**

- The Supreme Court, in this case, went into the understanding of undue influence by referring to section 16 of the Contract Act and held that undue influence could operate in situations where the donee stands in a fiduciary relationship to the donor or holds a real or apparent authority over him.
- The Court stated that before examining whether undue influence was exercised or not, “it must scrutinise the pleadings to find out that such a case has been made out and that full particulars of undue influence have been given as in the case of fraud.”
- The Court observed that undue influence had not been sufficiently alleged either on the pleadings or substantiated on the evidence adduced. Thus the ruling of the subordinate court was restored.

C) Afsar Sheikh v. Soleman Bibi And Ors.²¹

➤ **BRIEF FACTS:**

- In this case, a suit was filed by the respondent for the declaration of a gift (Hiba) made by him (predecessor-in-interest) as void on the grounds of fraud and misrepresentation by the defendant (donee), alleging that the defendant represented the gift to be a deed of cancellation of a will.
- The appellant in the original plaint claimed that he was “an illiterate, simple villager, aged about 90 years” and that the defendant was a distant relative who “his confidence and used to help him in the cultivation of his lands”. The Appellant then alleged that the defendant had through misrepresentation and fraud under the impression of cancelling a deed previously made, executed a gift deed in his own favour.

²¹ 1976 AIR 163.

- The defendant in the written statement averred that the defendant treated the appellant like his father and that the appellant had voluntarily made the gift deed out of affection.
- The trial court and the appellate court of the first appeal both dismissed the suit as it found that no case of misrepresentation could be made out.
- In the second appeal, the High Court ruled in favour of the original plaintiff on the grounds that the original defendant used to assist the original plaintiff in the management of the property and thus won the original plaintiff's confidence. The court thus held that the defendant was in a position to exercise undue influence on the original plaintiff in this case and thus the gift deed would be void on account of such undue influence.
- An appeal was then made before the Supreme Court.

➤ **OBSERVATIONS OF THE SUPREME COURT:**

- The Supreme Court held that the judgement of the second appellate court was erroneous as it tried to make a case of undue influence which was not pleaded by the parties in the trial or previous appeals.
- The Supreme Court observed that general allegations in the plaint stating the “plaintiff was a simple old man of 90 years who had reposed great confidence in the appellant” was not sufficient.
- The Court further observed that stating the relationship itself was not sufficient particulars to make out undue influence and that the manner in which such influence was exerted needs to be stated.

The above judicial ruling thus showed that particulars of undue influence cannot be comprehensively inferred from a literal reading of Order VI, Rule 4. The exertion of undue influence needs to be understood in the context of the circumstances of the case. The relationship between the parties and the acts that purport the exertion of undue influence need to be clearly stated to complete the particulars in pleadings. The test of exertion of undue influence may be that of section 16 of the Indian Contracts Act, which requires that one of the parties should be in a position to dominate the will of the other.

Reference made to the Indian Contract Act, however, does not shift the burden of proof on the mere basis of the pleadings unless the court affirms that the facts of the pleadings make out a clear case of undue influence. In the case of *Ladli Prasad*, though the appellant was in a dominant position, there was no case of undue influence made out due to the absence of instances that showed any attempt made on the part of the appellant to use such a position to his advantage. In the case of *Subhas Chander*, the court held that absence of substantial allegations of undue influence in pleadings would prevent the courts from making out such a case. Providing clarity on the nature of facts required, the case of *Afsar Sheikh* clears that mere mention of the existence of a relationship between the parties is insufficient particulars and the same needs to be substantiated with the nature of dominance. Secondly, it laid down that Courts cannot on the make a new case of undue influence where the allegations of misrepresentation and fraud have been made.

IV) CONCLUSION:

The origin of pleadings in written form in the old English system of oral pleadings highlights that there was a need felt for a more systematic mechanism to overcome complex matters. While the early pleadings in the Roman system required strict adherence to set formats, the gradual changes created the scope for more specificity to be brought in the facts which were to be relied upon. This helped to overcome the rigidity of the system of exclusive formats which would not accommodate the facts peculiar to a case.

The modern form of pleadings is governed by procedural laws. The Civil Procedure Code, 1908 lays down the essentials required to make a valid pleading before the court. But these rules only supplement the basic framing of pleadings. In order to ensure that the pleadings are well drafted to present the relevant facts in an appropriate and comprehensive manner before the court and to provide sufficient notice to the opponent, it is important to segregate the different facts and incorporate them suitably. For this it is essential firstly, to distinguish between material facts, assertions and evidence. The rules of pleadings state that supplementary facts which seek to support a claim need not be added to pleadings.

Considering the above rule with specific regard to pleadings in cases where the parties seek to rely on the claims of undue influence, it is important to distinguish between facts that broadly correlate to the essentials of undue influence (with reference to the Indian Contracts Act) and the facts which provide details of specific instances that show the exertion of such influence. The decisions of the Supreme Court studied herein lay down that the courts cannot

traverse on claims of undue influence without any specific details of the instances being pleaded. From these decisions, it can be inferred that the nature of facts pertaining to undue influence should be mentioned in the pleadings in a manner that it a) clarifies the nature of relationship between the parties, b) gives description of the reasons why one party is in a position to dominate the will of the other and c) then describe the instance where the defending party has made use of such influence to gain some advantage at a loss to the plaintiff. Thus broad allegations produced in the pleadings on the intention of the defending party to fraudulently incur gains or of the defending party holding authority or control will not suffice to make a case of undue influence. Similarly, mere defence of such influence cannot stand without the details of specific incidents.

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