

## APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice and  
Mr. Justice Tyabji.

SRI K. L. JAGANNADA RAJU GARU AND ANOTHER  
(PLAINTIFFS), APPELLANTS,

v.

SRI RAJAH K.V. S.V.L.N.V.J.B. PRASADA RAO GARU  
AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Expectancies—Contracts for sale of, validity of—Transfer of Property Act (IV of 1882), sec. 6—Indian Contract Act (IX of 1872), sec. 23—Estate falling into possession—Specific performance, suit for—Maintainability of suit—Rule of English Law—Rule in India before Transfer of Property Act—Doctrine of feeding the estoppel, meaning of.*

Contracts for sale of expectancies are void in India under the provisions of section 6 of the Transfer of Property Act and section 23 of the Indian Contract Act, and a suit for the specific performance of such a contract, instituted after the expectancy fell into possession is not maintainable.

The statute law of India forbids transfers of expectancies, and it would be futile to forbid such transfers, if contracts to transfer them are to be enforced as soon as the estate falls into possession.

In England and in India before the Transfer of Property Act, a mere chance of succeeding to an estate was a bare possibility incapable of assignment, but in England it is settled law that in the case of such expectancies, equity will enforce a contract to convey the estate when it fell in, and a similar rule has been applied in India in cases which were not governed by the Transfer of Property Act.

Courts are bound to give effect to the plain provisions of the statute law, instead of following a course of English decisions which are based on a course of long established practice rather than on principle.

"Equitable doctrine of feeding the estoppel," explained.

*Raja Sahib Prahlad Sen v. Baboo Sudhur Sing* (1889) 2 B.L.R., 111 at p. 117. *Mussumat Oodey Koowur v. Mussumat* (1870) 13 M.J.A., 585, *Ram Nirunjan Singh v. Prayag Singh* (1882) I.L.R., 8 Calc., 138, *Gitabai v. Balaji Keshav* (1893) I.L.R., 17 Bom., 232, *Sumsuddin v. Abdul Husein* (1907) I.L.R., 31 Bom., 165, *Dhoorjeti Subbayya v. Dhoorjeti Venkayya* (1907) I.L.R., 30 Mad., 201 and *Sham Sunder Lal v. Achhan, Kumbar* (1899) I.L.R., 21 All., 71 (P.C.), referred to.

APPEAL against the decree of C. V. KUMARASWAMI SASTRIYAR, the District Judge of Ganjam and Berhampur, in Original Suit No. 19 of 1912.

\* Appeal No. 184 of 1913.

The plaintiffs sued for specific performance of a contract for sale of one-half of the estate of Urlam which was originally the property of one V who died without issue leaving a widow M. The contract was entered into by the defendants and their late father Sanyasi Raju who was the nearest presumptive reversioner to the Estate at the date of the execution of the contract, viz., 11th May 1904. The first and second defendants were also reversioners at the time but one degree more remote than their father. The contract provided that the conveyance should be executed and possession delivered after the estate fell into possession. M died in 1908. The plaintiffs instituted the suit in 1911 for specific performance of the contract after the estate had become vested in the defendants on the death of the widow. The defendants pleaded that the contract was void in law and that a suit for specific performance or for damages was not in law maintainable. The District Judge who tried the case upheld this contention and dismissed the suit. The plaintiffs preferred an appeal to the High Court.

SRI JAGAN-  
NADA RAJU  
v.  
SRI RAJAH  
PRASADA RAO.

*P. Somasundaram* for the appellants.

*S. Srinivasa Ayyangar* for *P. Narayanamurti*, *B. Narasimha Rao* and *B. Somayya* for the respondents.

*N. Subba Rao* and *S. Gopalaswami Ayyangar* for the second respondent.

WALLIS, C.J.—This is an appeal from a decree of the District Judge of Ganjām dismissing a suit brought by the plaintiff for specific performance of a contract entered into on the 11th May 1894 by the defendants and their father who were at that time reversioners of the Urlam estate to the plaintiff to execute a proper sale-deed in his favour when the time came for putting him in possession. The learned District Judge, now Mr. Justice KUMARASWAMI, has dismissed the suit on the ground that such a contract by reversioners is prohibited by section 6 of the Transfer of Property Act and is also void under section 23 of the Indian Contract Act as tending to defeat the provisions of law contained in the aforesaid section of the Transfer of Property Act. The question is undoubtedly one of great importance and Mr. S. Srinivasa Ayyangar has contended forcibly before us that contracts of this kind were enforceable both in England and in India before the Transfer of

WALLIS, C.J

SRI JAGAN-  
NADA RAJU  
v  
SRI RAJAH  
PRASADA RAO.  
—  
WALLIS, C.J.

Property Act and that section 6 was not intended to affect them. There can be no doubt that before the Acts in England and in India, a mere chance of succeeding to an estate was a bare possibility incapable of assignment: *Jones v. Roe*(1). In *In re Parsons*(2) and *Ramchandra Tantra Das v. Dharmo Narayan Chuckerbutty*(3) where it was held that the interest of an heir under the Hindu Law expectant on the death of a widow in possession was not property liable to attachment and sale in execution. It was nevertheless held in England that in the case of such expectancies equity would enforce a contract to convey the estate when it fell in. This was decided in the time of Charles I in *Wiseman Con Roper*(4) and notwithstanding certain observations of Lord ELDEN in *Carleton v. Leighton*(5) and *Harwood v. Tooke*(6) was affirmed in *Wethered v. Wethered*(7) and *Lyde v. Mynn*(8) and has since been treated as settled law. Mr. Srinivasa Ayyangar contends that the law in India was the same, and that the Transfer of Property Act has not made any difference and he refers to *Raja Sahib Prahlad Sen v. Baboo Sudhur Singh*(9) where their Lordships with reference to such an expectancy speak of "a contract to be performed in future and upon the happening of a certain contingency of which the purchaser may claim a specific performance if he comes into Court showing he has done all he was bound to do." The other side refer to a passage in *Mussumat Oodey Koowar v. Mussumat*(10) where their Lordships observed that a certain petition by which the petitioner renounced her claim to succeed on the death of a kinsman did not operate as a conveyance or a contract first because the petitioner had at the time no interest in the property and secondly because the petitioner did not show that she was contemplating any conveyance, but these observations do not amount to a direct ruling as to a contract to convey when the estate came into possession. It was apparently with reference to this case that their Lordships observed in a passage of an unreported judgment cited in *Ram Nirunjun Singh v. Prayag*

(1) (1789) 3 T.R., 88 at p. 93.

(3) (1871) 7 B.L.R., 341.

(6) (1805) 8 Mer., 867.

(7) (1828) 2 Sim., 183.

(9) (1869) 2 B.L.R., 111 at p. 117.

(2) (1890) 45 Ch. D., 51.

(4) (1845) Ch. Ref., 158.

(6) (1829) 2 Sim., 192.

(8) (1823) 1 My. & K., 883.

(10) (1870) 13 M.L.A., 585 at p. 588.

*Singh*(1) that it went far to show that the principle of English law which allows a subsequently acquired interest to feed, as it is said, the estoppel does not apply to Hindu conveyances." It was held by the Calcutta High Court in that case following the English authorities that a contract between expectant heirs to divide the estate when it fell in, in a particular way, was enforceable and this was treated as well established by Sir CHARLES SARGENT in *Gitabai v. Balaji Keshav*(2) at a time when the Transfer of Property Act had not been extended to Bombay. Lastly in *Nasir-ul-Haq v. Baiyaz-ul-Rahman*(3) the learned Judges were of opinion that such contracts were not affected by the provisions of section 6 citing the decision in *Ram Nirunjan Singh v. Prayag Singh*(1) which was before the passing of that Act, but the point was unnecessary for the decision.

SRI JAGAN-  
NADA RAJU  
SRI RAJAH  
PRASADA RAO.  
WALLIS, C.J.

It cannot be said that there is direct authority in India the other way, but the respondents rely on *Sumsuddin v. Abdul Husein*(4) and *Dhoorjeti Subbaya v. Dhoorjeti Venkayya*(5) as to the scope of section 6 of the Transfer of Property Act. That section provides that property of any kind may be transferred except as provided by the Act itself or any other law for the time being in force and that (a) the chances of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature, cannot be transferred. In the former case JENKINS, C.J., and BEAMAN, J., held a release by a Muhammadan woman of her expectancy of succeeding to a share of her father's estate was void as opposed to the provision of the section and could not, as in England, be enforced in equity when the reversion fell into possession. In the later decision to which I was a party, it was held that a mortgage by an expectant heir of his chance of succession was void under section 6 and could not be enforced by virtue of section 43. This is in accordance with the observations of Lord DAVEY delivering the judgment of their Lordships *Sham Sunder Lal v. Achhan Kunwar*(6) and with the observations of their Lordships in the judgment cited in *Ram Nirunjan Singh*

(1) (1882) I.L.R., 8 Cal., 138.

(2) (1893) I.L.R., 17 Bom., 232.

(3) (1911) I.L.R., 33 All., 457.

(4) (1907) I.L.R., 31 Bom., 165.

(5) (1907) I.L.R., 30 Mad., 201.

(6) (1899) I.L.R., 21 All., 71 at p. 80 (P.C.).

SRI JAGAN-  
NADA RAJU  
v.  
SRI RAJAH  
PRASADA RAO.  
—  
WALLIS, C.J.

v. *Prayag Singh*(1). It is however contended by Mr. Srinivasa Ayyangar that these decisions do not affect the present point, and that in granting specific performance the Court will not be giving effect to the equitable doctrine of feeding the estoppel which he admits may be inapplicable, but merely enforcing a contract to do something in future which will not be illegal at the time it is done, viz., to convey the estate after it has fallen into possession.

The other side rely on the ruling of JENKINS, C.J., that under section 6 it was not intended to allow of the transfer of a mere chance of succession either at law or in equity, and if this be so, they contend that the learned District Judge was right in holding that the contract was void under section 23 of the Indian Contract Act on the ground that if permitted it would defeat the provisions of section 6 (a) of the Transfer of Property Act.

On this question looked at apart from authority, I should not entertain any doubt as it seems futile to forbid such transfers of expectancies if contracts to transfer them are to be enforced as soon as the estate falls into possession. In these circumstances it seems to me that it is our duty to give effect to what we consider plain provisions of our statute law instead of following a course of English decisions, which would appear to have been based, from the very first on a regard for long established practice rather than on principle and to have failed to commend themselves to Lord ELLEN. For these reasons I think the District Judge was right and that the appeal must be dismissed with costs. Memorandum of objections is dismissed with costs.

TYABJI, J.

TYABJI, J.—The question in this appeal is whether specific performance may be granted of an agreement which has been entered into by an expectant reversioner to transfer certain properties if and when the properties should devolve upon him as reversioner.

It was not seriously suggested that there was any rule of Hindu Law by which the rights of the parties should be determined to the exclusion of section 6 (a) of the Transfer of Property Act. Some cases that were relied upon by the appellant in reference to this point were decided before the Transfer of

Property Act came into force, and therefore proceeded on the rule of English equity which enforced specific performance of such agreements; they do not enunciate any specific rule of Hindu Law which is to prevail unaffected by the Transfer of Property Act (section 2 (d) of the Act). On the other hand in *Sham Sunder Lal v. Achhan Kunwar*(1) there is a dictum of the Privy Council to the contrary effect, which seems to have been given effect to in *Nund Kishmore Lal v. Kaun Ram Tewary*(2), *Manikkam Pillai v. Ramalingam Pillai*(3) and *Sumsuddin v. Abdul Husein*(4).

SRI JAGAN-  
NADA RAJU  
v.  
SRI RAJAH  
PRASADA RAO.  
TYABJI, J.

It seems to me therefore that the appeal must be decided with reference to the Transfer of Property Act. The effect of section 5 and clause (a) of section 6 so far as material is that an act by which a person purports to convey in present or in future the chance of an heir-apparent succeeding to an estate does not operate to transfer the chance. The argument of the appellant was two-fold: (1) that there is no attempt in the present case to convey any such chance, that what was done was an agreement to convey something in future and (2) that the subject of the agreement was the property and the rights after they were to become vested, not merely a chance of succeeding as an heir-apparent.

This argument does not seem to me to be sound. When property is conveyed in future there is said to be a transfer of property no less than when it is conveyed in present (section 5 of the Transfer of Property Act); and the legislature has provided that the chance of an heir-apparent cannot be the subject of conveyance in present or in future. An agreement therefore to convey in future such a chance cannot be considered a valid contract because it is an agreement to transfer that which the law says is incapable of transfer. The "object" of such an agreement is of such a nature that if permitted, it would defeat the provisions of section 6 (a) of the Transfer of Property Act and section 23 of the Indian Contract Act.

Can it then be said that what was agreed to be transferred here was not such a chance, but something else?

The Transfer of Property Act does not permit a person having expectations of succeeding to an estate as an heir, to transfer the expectant benefits; when such a transfer is purported to

(1) (1898) 1 L.R., 21 All., 71 at p. 80 (P.C.). (2) (1902) L.L.R., 29 Cal., 355.

(3) (1906) I.L.R., 29 Mad., 120. (4) (1904) L.L.R., 31 Bom., 165 at p. 174.

SRI JAGAN-  
NADA RAJU  
v.  
SRI RAJAH  
PRASADA RAO.  
—  
TYABJI, J.

be made an attempt is in effect made by the two persons to change with each other their legal positions, an attempt by the one to clothe the other with what the legislature refuses to recognise as rights, but styles as a mere chance incapable of being transferred. It would be defeating the provisions of the Act to hold that though such hopes or expectations cannot be transferred in present or future, a person may bind himself to bring about the same results by giving to the agreement the form of a promise to transfer not the expectations but the fruits of the expectations, by saying that what he has purported to do may be described in a different language from that which the legislature has chosen to apply to it for the purpose of condemning it.

When the legislature refuses to the transaction as an attempt to transfer a chance, it indicates the true aspect in which it requires the transaction to be viewed. The alleged transferor never purports to transfer a chance *eo-nominee*, but the legislature by the terminology it has adopted has in effect laid down that until the expectant heir actually succeeds to the inheritance he has no right but a mere chance of succeeding and that when he purports to deal with the subject of his expected inheritance he in fact deals only with that chance whatever be the name by which he chooses to designate it.

It seems to me to be unnecessary to deal with the English cases which have been cited to us, as we must guide ourselves by the provisions of the Acts of the legislature. It was pointed out to us that *Sumsuddin v. Abdul Husein* (1) has been dissented from [see *Nasir-ul-Haq v. Faiyaz-ul-Rahman* (2) and *Mohammad Hashmat Ali v. Kaniz Fatima* (3)]; and inasmuch as *Sumsuddin v. Abdul Husein* (1) purports to proceed on rules which must be applicable to Hindus as well as to Mussalmans it is argued that the decision is inconsistent with the well recognised principle that a Hindu reversioner may empower a widow to alienate property in which she has only a life-estate. That principle has however been supported on the ground that the reversioner's consent furnishes evidence of necessity or that the reversioners in effect release their claim, and the Allahabad Court seems to proceed on the basis that releases or relinquishments ought (contrary to the decision in

(1) (1907) I.L.R., 31 Bom., 165.

(2) (1911) I.L.R., 33 All., 457.

(3) (1915) 13 A.L.J., 110.

Sumsuddin's case) to be governed by a different rule from that applicable to transfers. On these points it is not necessary for me to express any opinion as we have not to deal with a relinquishment.

I agree therefore that the agreement cannot be enforced and that the appeal should be dismissed with costs. The memorandum of objections is also dismissed with costs.

K.R.

SRI JAGAN-  
NADA RAJU  
v.  
SRI RAJAH  
PRASADA RAO.  
—  
TYABJI, J.

## APPELLATE CRIMINAL.

*Before Mr. Justice Kumaraswami Sastriyar.*

RE S. KUPPUSWAMI AIYAR (ACCUSED), PETITIONER.\*

*Criminal Procedure Code (Act V of 1938), ss. 435 and 439—Charter Act (24 & 25 Vict., cap. 104), sec. 15—High Court, powers of, to revise—Complaint of offences under Indian Penal Code (Act XLV of 1860), ss. 189 and 504—Charges framed—Prosecution evidence unreliable—Offences not made out—Prosecution not bona fide—Interlocutory order—Indian Penal Code (Act XLV of 1860), ss. 189 and 504—Process-server's right to enter any house, to effect service.*

1915.  
March  
12 and 26.

28 M. J.  
565.

A complaint was preferred against the accused in respect of offences under sections 189 and 504, Indian Penal Code, and charges were framed under the said sections by a second-class magistrate. A criminal revision petition was filed by the accused in the High Court to quash the proceedings on the ground that the evidence on record was insufficient to substantiate either of the charges and that the proceedings were instituted out of pure malice and with the object of harassing the petitioner. A preliminary objection was taken as to the maintainability of the petition and the powers of the High Court to interfere in revision.

*Held*, that though the power of revision has to be exercised with great care the High Court has jurisdiction to interfere at any stage of the proceedings, if it considers that in the interest of justice, it should do so.

*Held* (on the facts of the case), that the case was a fit one for interference in revision, as a careful consideration of the evidence for the prosecution led to the conclusion (1) that the ingredients necessary to constitute an offence under sections 189 and 504, Indian Penal Code, had not been made out and (2) that the case as presented to the Court bore considerable evidence of fabrication and that the development of the case in the later stages showed that it was not a case of bona fide prosecution but that the complainant was a tool in the hands of others.

\* Criminal Revision Case No. 667 of 1914.