

PRIVY COUNCIL.*

RAMATHAI VADIVELU MUDALIAR (DEFENDANT),

v.

PERIA MANICKA MUDALIAR (PLAINTIFF).

1920,
February 2
and 20.[On appeal from the High Court of Judicature
at Madras.]

Sale in execution of decrees—Bisami purchase—Purchase on behalf of another person—Certified purchaser—Agreement to convey made after sale to carry out agreement made before sale—Civil Procedure Code, 1908, section 66, sub-section (1).

Section 66 of the Code of Civil Procedure, 1908, sub-section (1) enacts that "No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed, on the ground that the purchase was made on behalf of the plaintiff, or on behalf of someone through whom the plaintiff claims."

The appellant purchased at an execution sale certain immovable property which he had before the sale agreed with the respondents to convey to them. After the sale agreements were made by which the appellant bound himself to carry out the original agreement with the respondents. In suits by the respondents against the appellant for specific performance the defence was that the suits were barred by section 66, sub-section (1).

Held that the fresh agreements made after the sale, though carrying out those made before the sale, were not affected by section 66 and the suits were therefore not barred.

Venkatappu v. Jalayya (1919) I.L.R., 42 Mad., 615, approved.

Two Consolidated Appeals (47 of 1918) from a judgment and two decrees (10th April 1916) of the High Court (KUMARASWAMI SASTRI and SRINIVASA AYYANGAR, JJ.) at Madras which reversed two judgments and decrees of the Subordinate Judge of Chingleput.

The only point for report is whether the facts proved by the plaintiffs bring them within section 66 of the Code of Civil Procedure, 1908.

The facts are fully stated in the judgment of the Judicial Committee.

* Present:—Viscount CAVE, Lord MOULTON, Sir JOHN EDGE and Mr. AMER ALI.

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ON THIS APPEAL

B. Dube, for the appellant, contended that the purchase was "made on behalf of the plaintiffs," and was therefore barred by sub-section (1) of section 66 of the Civil Procedure Code, 1908; and referred to *Kishan Lal v. Garuruddhwaja Prasad Singh*(1), *Ganga Baksh v. Rudar Singh*(2) and *Suraj Narain v. Ratan Lal*(3). A suit on the ground that the property was purchased on behalf of the plaintiff, and one where the purchaser bought holding an agreement with the plaintiff to make the property over to him when bought, are practically the same, and are, it is submitted, both within section 66. Section 54 of the Transfer of Property Act, 1882, prevents any interest in the property being given by such a transaction.

Kemcorthy Brown and Palat, for the respondents, contended that it having been found as a fact that they agreed to convey the property, section 66, sub-section (1), was not applicable. Its object was to make illegal benami purchases at sales in execution: see *Ganga Sahai v. Kesri*(4). It was quite legal for the purchaser to buy for himself, and afterwards to transfer it to the plaintiff. Moreover, it was in evidence that a fresh agreement was made after the certified purchase. That is a perfectly legal transaction: see *Venkatappa v. Jalayya*(5); and section 66 would not apply.

B. Dube replied.

The JUDGMENT of their Lordships was delivered by

Viscount
CAVE.

Viscount CAVE.—These are consolidated appeals from two decrees of the High Court of Judicature at Madras reversing two decrees of the Subordinate Judge of Chingleput, and giving judgment in both suits for the plaintiffs. The following statement of the facts is founded upon the findings of the High Court, which, for reasons which will hereafter appear, their Lordships accept as correct:—

One Sundaranmal was the owner of certain lands in the village of Kovur and elsewhere in the Chingleput district,

(1) (1899) I.L.R., 21 All., 238.

(2) (1903) I.L.R., 22 All., 434.

(3) (1918) I.L.R., 40 All., 159 (P.C.); L.R., 44 I.A., 201.

(4) (1915) I.L.R., 37 All., 545 (P.C.); L.R., 42 I.A., 177.

(5) (1919) I.L.R., 42 Mad., 615 (F.B.).

subject to a first mortgage for Rs. 25,000 and interest and to a second mortgage for Rs. 9,500 and interest, and had incurred other debts. In the year 1902, the second mortgagees brought a suit to enforce their mortgage, obtained a decree for the sale of the mortgaged property, and themselves purchased it at the auction at a low price. Thereupon Sundarammal, in order to get this sale set aside under section 310-A of the Civil Procedure Code and to provide for her other debts, entered into an agreement with four persons named Murugappa, Kandasami, Muni-sami and Ponnaubala, for the sale of the whole property to them at the price of Rs. 65,000, being a sum sufficient to pay off the mortgage and other debts and to provide a small balance for the vendor. These persons were friends of Sundarammal, and it was understood that they should dispose of the lands piecemeal and, after paying out of the proceeds of sale the mortgage and other debts of Sundarammal and any money due to themselves, should pay over to her any balance which might remain. The property was accordingly conveyed to the four persons abovenamed (who will be referred to as 'the vendees') on 10th August 1902; and on 15th August 1902, they paid into Court a sum of Rs. 15,598, being a sum sufficient to satisfy the second mortgagees, and got the sale to those mortgagees set aside. On 27th September 1902 the vendees divided amongst themselves about sixty acres of the land, which were taken to represent in value the amount which they had paid for redeeming the second mortgages; and some time afterwards, as no sale could be made of the remaining lands in Kovur, the vendees made a similar division of those lands among themselves, on the understanding that each of them should be responsible for his share of the debts. On this division a part of the land was reserved for Sundarammal, apparently in satisfaction of her interest in the ultimate balance to arise on realization. Murugappa died, and his interest in the lands became vested in his widow and certain alienees from her. Meanwhile, the first mortgagees, who had not been parties to the arrangements above recited, became dissatisfied; and in the year 1904 they took proceedings to enforce their mortgage, and on 14th March 1904 obtained a decree for sale. The sale was fixed for 3rd May 1905; and it is obvious that the persons claiming under the deed of 1902 ran the risk, unless they made

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some arrangement, of losing the benefit of their purchase and of the monies which they had found to satisfy the second mortgagees. They accordingly determined to bid for the property, and for that purpose got together a sum of about Rs. 10,000, which they contributed in unequal shares. It was then ascertained that the appellant Vadivelu and two other persons named Vythilingam and Dharmakartha Kandasami were also proposing to bid, and it was in order to meet this difficulty that the agreement giving rise to these suits was entered into. The agreement was entered into orally between the three persons last named, that is to say, the appellant, Vythilingam and Dharmakartha Kandasami, and the four original vendees or their representatives, and was to the effect that the vendees should not bid for the property but should permit the above named three persons to buy, that if they bought the vendees should advance to them the above sum of about Rs. 10,000 to assist them in providing the deposit and completing the purchase, and that whichever of them became the purchaser of any property allotted on the first or second division to any of the original vendees (with an exception to be immediately mentioned) should convey such property to such vendee or his representative, on payment by him of such proportion of the auction price as might be found to be due from him on an adjustment of accounts. An exception was made in the case of Ponnambala, one of the four vendees, who was not anxious to get back the property allotted to him on the second division; and, so far as he was concerned, the arrangement applied only to the property passing under the first division, and it was understood that, as regards the properties allotted to him on the second division, the appellant should stand in his shoes.

The auction accordingly took place, and the appellant was declared the purchaser of lot 3, comprising about 115 acres of the Kovur lands, for Rs. 21,500, other lots being purchased by Vythilingam and Dharmakartha Kandasami. The vendees duly made the contribution of Rs. 10,000 which they had promised; the balance required was raised from other sources, and sale certificates were issued to the purchasers and possession given to them. The lots purchased by Vythilingam and Dharmakartha Kandasami have been dealt with in accordance with the agreement, and need not be further referred to.

In February or March 1906, there was an adjustment of accounts between the appellant and the vendees or their assignees, in accordance with the arrangement above referred to. The decision of the questions which arose on the adjustment was entrusted to a panchayat; and it appears from the evidence that the appellant and the other persons concerned signed a written undertaking to abide by the award of the panchayatdars. In the course of this adjustment a slight variation was made in the allotment which had been previously made of the lands; and this variation was accepted by all parties and embodied in the award which fixed the amount payable by each of the vendees on taking his conveyance. The appellant was then quite willing to deal with the allotted lands in the manner agreed before the auction sale and was a party both to the agreement to abide by the award of the panchayatdars and to the agreement to vary the allotments.

In the year 1907, the appellant having shown reluctance to carry out the arrangement, a suit (No. 6 of 1907) was brought against him by certain persons who were nominees of Munisami and Kandasami. This suit did not go to trial but was settled by a compromise, by which the appellant agreed to convey to the plaintiffs in that suit about fifty acres of the lands purchased by the appellant. At the time of this compromise the other persons representing the original vendees, that is to say, Ponnambala and the persons claiming under Murugappa, insisted upon the appellant conveying to them also their respective shares in the property; and the representative of the appellant, while pointing out that an agreement to execute such a conveyance could not be included in the *razinama* in which the compromise then in question was to be embodied, undertook that the conveyance should afterwards be made. At the same time a variation was made in the original agreement so far as the representatives of Murugappa were concerned, those persons undertaking to take over from the appellant certain further properties and to pay an additional Rs. 2,600 for them.

Notwithstanding the abovementioned transactions, the appellant afterwards refused to convey to Ponnambala and to the representatives of Murugappa the properties to which they were entitled under the arrangement; and ultimately, viz., in

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the years 1912 and 1913, these suits were brought to enforce such a conveyance. The plaintiffs in one suit were the persons claiming under Murugappa, and the plaintiffs in the other suit were Ponnambala and persons claiming under him, the appellant being the defendant in both suits.

At the hearing of the suits two main points were raised by the appellant, viz., (1) that the appellant had not in fact entered into the agreement alleged or received the contribution of Rs. 10,000; and (2) that in any case the suits were barred by section 66 of the Code of Civil Procedure. The Subordinate Judge, by whom the suits were tried, found the first issue in favour of the appellant, and accordingly it was unnecessary for him to deal with the second question. On appeal, the High Court overruled this decision and held that the appellant had received the Rs. 10,000 and had agreed to convey the properties in manner alleged by the plaintiffs. The Court also held that section 66 of the Civil Procedure Code was not a bar to the suits, and accordingly passed decrees in favour of the plaintiffs. Thereupon this appeal was brought.

Upon the issue of fact their Lordships have no hesitation in accepting the decision of the High Court. The finding of that Court is precisely in accordance with and is practically based upon a statement made by the appellant himself in the suit No. 6 of 1907 above referred to. The appellant in the course of the trial maintained that the statement which he had himself put forward in 1907 was wholly untrue and was made for some indirect purpose; but the High Court declined to accept this explanation, which was not supported by the other facts in the case, and their Lordships entirely agree with this view.

The alternative defence is based on section 66 of the Code of Civil Procedure, which is in the following terms:

“No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.”

The question to be determined is whether the facts proved by the plaintiffs in these suits bring them within this section.

This point was dealt with in the judgment of the High Court as follows:

“On the first question, from the facts which we find to have been proved in this case, it is clear that section 66 is not a bar to the plaintiffs’ claim for specific performance of the contract. Their case is not that the first defendant or Vythilingam or Dharmakartha Kandasami were merely *benamidars*, but that they were to be real purchasers; but they agreed to convey to the plaintiffs in each of these snits or to their predecessors in title such portions of the property for which (as we find) they had already paid or had to pay under that agreement the balance of the purchase money. That, we think, is a sufficient answer to the plea under section 66 of the Civil Procedure Code.”

It was argued by counsel for the appellant that the agreement relied upon by the plaintiffs, even as found by the High Court, amounted in substance to an agreement that the appellant should purchase as to certain parts of the property on behalf of the respondents or of the persons whom they represent; and he was able to point to certain expressions both in the plaints and in the evidence of some of the plaintiffs’ witnesses which supported that view of the transaction. If the agreement entered into before the auction stood alone, there would be considerable force in this contention. The object of section 66 was to put an end to purchases by one person in the name of another; and the distinction between a purchase on behalf of another, and a purchase coupled with an undertaking to convey to another at the price of purchase, is somewhat narrow. But whatever doubt might be caused by the character of the original agreement is removed by the events which happened after the sale. It was decided in *Venkatappa v. Jalayya* (1), that an agreement subsequent to a purchase is not affected by the section, and there can be no question as to the correctness of that decision. In the present case agreements were entered into after the sale, namely, first at the time of the panchayat in 1906, and secondly, on the occasion of the compromise of the suit of 1907, by which the appellant bound himself to carry out the original contract with the respondents, with certain variations which were then agreed to and accepted by all parties. These

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sequent agreements are unaffected by the section and are accordingly enforceable against the appellant.

For the above reasons their Lordships will humbly advise His Majesty that these consolidated appeals fail and should be dismissed with costs.

Appeals dismissed.

Solicitors for the appellants:—*Barrow, Rogers and Nevill.*

Solicitors for the respondents:—*T. L. Wilson & Co.*

J.V.W.

PRIVY COUNCIL.*

KRISTNAYYA AND ANOTHER (DEFENDANT),

v.

LAKSHMIPATHI AND OTHERS (PLAINTIFFS).

[On appeal from the High Court of Judicature
at Madras,
and another appeal, two appeals consolidated.]

Hindu Law—Adoption by widow who has no authority from her husband—Mitakshara law as administered in the Dravada district of the Madras Presidency—Consent of sapindas.

Under the law of adoption as administered in the Dravada district a Hindu widow, in the absence of any authority from her husband to adopt a son to him, may make such an adoption with the consent of his sapindas; *The Collector of Madura v. Mootoo Ramalinga Sathupathy* (1868) 12 M.I.A., 397.

There should be such proof of assent on the part of the sapindas as should be sufficient to support the inference that the adoption was made by the widow not from capricious or corrupt motives in order to defeat the interest of this or that sapinda, but on a fair consideration by what may be called a family council of the expediency of substituting an heir by adoption to the deceased husband; *Vellanki Venkata Krishna Rao v. Venkata Rama Lakshmi* (1876) I.L.R., 1 Mad., 174; L.R., 4 I.A., 1.

The absence of consent on the part of the nearest sapindas cannot be made good by the authorization of distant relations whose assent is likely to be influenced by improper motives; *Veera Basavaraju v. Balaswrya Prasada Rao* (1918) I.L.R., 41 Mad., 998 (P.C.); L.R., 45 I.A., 265.

The consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest

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