

PRIVY COUNCIL.*

SAKALAGUNA NAYUDU AND ANOTHER (DEFENDANTS),
APPELLANTS,

1928,
April 24.

v.

CHINNA MUNUSWAMI NAYAKAR (PLAINTIFF),
RESPONDENT.

[On Appeal from the High Court of Judicature at
Madras.]

Specific performance—Sale of immovable property—Option to re-purchase in 30 years—Assignment of right by vendor—Assignee's claim to specific performance.

A document executed by the parties to, and on the date of, a sale of immovable property providing that the purchaser shall reconvey the property to the vendor after a period of 30 years on the vendor paying the purchase price, constitutes a contract enforceable by the assignee of the vendor against the sons of the purchaser; it is not merely an offer incapable of assignment until accepted by tender of the price.

APPEAL (No. 53 of 1926) from a decree of the High Court (March 5, 1925) reversing a decree of the Subordinate Judge of Chingleput.

The respondent sued the appellants in 1920 for specific performance of an agreement entered into by their father in 1891 to recover certain purchased property in the thirtieth year from the date of purchase; the respondent claimed as assignee of the benefit of the agreement.

The facts appear from the judgment of the Judicial Committee.

The Subordinate Judge was of opinion that the transaction of 1891 was an absolute sale, not a mortgage by conditional sale. He held that the counterpart

* Present: LORD PHILLIMORE, LORD CARSON and SIR LANCELOT SANDERSON.

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document did not constitute a complete contract, but only a standing offer to the vendor, incapable of assignment until accepted by a tender of the price. He therefore dismissed the suit.

On appeal the decision was reversed and a decree for specific performance made. The learned judges (SPENCER and RAMESAM, JJ.) held that even if the transaction was not a mortgage by conditional sale, which it was not necessary to decide, there was a complete and assignable contract to reconvey.

Dunne, K.C., Narusimham and Subba Rao for the appellants.

De Gruyther, K.C. and *Abdul Majid* for the respondent.

The JUDGMENT of their Lordships was delivered by

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SIR LANCELOT SANDERSON.—This is an appeal by the defendants in the suit against a decree, dated the 5th March 1925, of the High Court of Judicature at Madras, which reversed a decree, dated the 26th June 1922, of the Subordinate Judge of Chingleput.

The suit was brought by the plaintiff in order to obtain a direction by the Court that the defendants should execute a conveyance of the property in suit in favour of the plaintiff and other consequent reliefs.

The learned Subordinate Judge dismissed the suit with costs; the High Court allowed the plaintiff's appeal with costs and ordered the defendants to execute the conveyance in favour of the plaintiff as prayed, and gave other necessary directions in respect thereof.

The material facts of this case are as follows:—The defendants are the sons of one Venkatapathi Nayudu. By a deed, dated the 27th January 1891, Venkata Subrahmanya Ayyar, on behalf of himself and as guardian of his minor son Krishnasami Ayyar, sold the

village of Siyatti to the abovementioned Venkatapathi for the consideration of Rs. 10,000.

On the same day the parties executed what was called a "counterpart document," by which it was provided that Venkatapathi should reconvey the said village to Venkata Subrahmanya after a period of thirty years from that date, i.e., in the Ani cultivation season of the thirtieth year, in case Venkata Subrahmanya wished to have the village again, and upon his paying to Venkatapathi the sum of Rs. 10,000.

The learned Judges of the High Court treated the "counterpart document" as having been executed by Venkatapathi in favour of Venkata Subrahmanya and his son Krishnasami, though the latter's name is not mentioned in the "counterpart document."

Their Lordships are of opinion that this was a right conclusion, because Venkata Subrahmanya and Krishnasami were members of a joint Hindu family, and the deed of sale was executed by Venkata Subrahmanya on behalf of his minor son as well as on his own behalf, and the "counterpart document" was obviously intended to give the right to call for a reconveyance of the property to the persons who were parties to the deed of sale.

In 1897 Venkata Subrahmanya was adjudicated insolvent and in 1899 he died, leaving Krishnasami, his only son, surviving him.

By a deed, dated the 12th May, 1910, Krishnasami sold the village of Siyatti to the plaintiff for the consideration of Rs. 19,200. It was agreed on behalf of the appellant that this deed contained not only a conveyance of the village but also an assignment of Krishnasami's right to the benefit of the "counterpart document."

By a deed, dated the 22nd February, 1916, the official assignee of Madras, and "as such the assignee of

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the estate and effects of C. Venkata Subrahmanya Ayyar," in consideration of the sum of Rs. 3,000 conveyed and assigned all the right, title and interest of the insolvent, Venkata Subrahmanya, in the house and lands in Siyatti village described in the schedule thereto to the said Krishnasami Ayyar.

It appears that both Venkatapathi and Krishnasami died in or about the year 1919.

On the 29th June, 1920, notice was given on behalf of the plaintiff to the defendants, alleging that the plaintiff was the assignee from Krishnasami, and as such was entitled to the reconveyance of the property in suit. There is no question before the Board as to the sufficiency of the tender of the money referred to in the notice, nor is there any question as to whether the reconveyance was called for at the proper time.

On the 12th July 1920, the present suit was instituted by the plaintiff.

On the 16th February 1921, the widow of Krishnasami executed what was called a deed of release in favour of the plaintiff. The deed recited, among other matters, that Krishnasami had settled matters with the official assignee and had obtained from him a sale deed for the benefit of the plaintiff in his own name, and had handed the same over to the plaintiff.

It concluded by stating that from the date on which Krishnasami executed the sale to the plaintiff, neither Krishnasami nor his widow, who was his heir, had any interest in the property comprised in the sale, and that even if there should be any interest possessed by the widow she relinquished the same to the plaintiff.

The evidence of the plaintiff with respect to the transaction with the Official Assignee was to the effect that he had contributed the sum of Rs. 1,500, part of the Rs. 3,000, paid to the Official Assignee, and that

Krishnasami had given to him the receipt which the Official Assignee had granted in respect of such payment; that the deed of the 27th February, 1916, was executed in favour of Krishnasami because the Official Assignee said that it must be taken in the name of Krishnasami, but that the deed was obtained to safeguard the plaintiff's interest and for his benefit; and that the deed was handed by Krishnasami to the plaintiff after it had been registered.

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The main question in this appeal is whether there was a contract made on the 27th January, 1891, between Venkatapathi of the one part and Venkata Subrahmanya and Krishnasami of the other part, by which Venkatapathi undertook for consideration to reconvey the property if the other parties to the contract offered to purchase the same at the time stated and for the amount mentioned in the "counter-part document," or whether, as alleged on behalf of the appellants and held by the learned Subordinate Judge, there was no completed contract, but only a standing offer by Venkatapathi, the benefit of which could not be assigned to a stranger such as the plaintiff, until the offer had been accepted by the tender of the amount in June, 1920, and the offer had ripened into a contract to buy and sell.

Their Lordships are of opinion that there was a completed contract between the parties on the 27th January, 1891.

All the elements necessary to constitute a contract were present. There was an undertaking on the part of Venkatapathi to reconvey the village to Venkata Subrahmanya and Krishnasami in the event of their calling for a conveyance at the time and upon the terms set out in the "counterpart document". The time at

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which the option was to be exercised and the price which was to be paid for the property were specified.

There was consideration for the contract because Venkatapathi, by the sale of the 27th January, 1891, obtained possession of the property, and Venkata Subrahmanya received Rs. 10,000, besides acquiring the right and benefit of getting back the village upon the conditions specified in the "counterpart document".

Their Lordships therefore concur with the conclusion of the learned Judges of the High Court on this question.

They are also of the opinion that it was not intended that the option could be exercised only by Venkata Subrahmanya and Krishnasami personally. The terms of the contract and the time at which the option was to be exercised go to show that the intention was that the option might be exercised by the above-mentioned two persons or their heirs.

It was not disputed that, if the transaction of the 27th January, 1891, amounted to a completed contract, as their Lordships have decided, the benefit of the contract could be assigned.

The only further question is whether the benefit of the contract had been effectually assigned to the plaintiff before the suit was instituted.

It was argued on behalf of the appellant-defendants that on the insolvency of Venkata Subrahmanya the property of the joint family, including the benefit of the above-mentioned contract, vested in the Official Assignee and that the benefit of the contract never was assigned to the plaintiff. On the other hand, it was argued on behalf of the plaintiff that on the insolvency of Venkata Subrahmanya the joint family property remained in the joint family subject to any action which the Official

Assignee might take to get possession of Venkata Subrahmanya's share.

In view of the facts of this case, their Lordships do not think it necessary to enter upon the consideration of this question or to decide which of the above-mentioned contentions is correct, because whichever of them be adopted, their Lordships are of opinion that the plaintiff must succeed.

If the first of the above-mentioned contentions be adopted, the plaintiff is entitled to rely on the conveyance of the 27th February, 1916, by which the Official Assignee conveyed all the right title and interest of the insolvent Venkata Subrahmanya in the village to Krishnasami. It is clear on the evidence that this conveyance, though taken in the name of Krishnasami, was on behalf of, and for the benefit of, the plaintiff, who had supplied part of the money paid to the Official Assignee and who had already purchased the village and the benefit of the contract dated the 27th January, 1891, for valuable consideration.

Krishnasami had at the time of the conveyance by the Official Assignee no interest in the village or the contract, as was subsequently acknowledged by his widow and heir.

If the second of the above-mentioned contentions be adopted, then the deed of the 12th May, 1910 by which Krishnasami conveyed the village and assigned the benefit of the contract of the 27th January, 1891, to the plaintiff, is sufficient to support the plaintiff's title, and his right to sue for the enforcement of the said contract.

Their Lordships, therefore, are of opinion that whichever of the above-mentioned contentions be adopted, the benefit of the contract had become vested in the plaintiff before the institution of the suit, and the

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plaintiff, having made an adequate tender of the amount specified in the contract at the time mentioned therein, was entitled to call upon the defendants, the sons and heirs of Venkatapathi, for a conveyance of the property.

Their Lordships are of opinion that the decree of the High Court dated the 5th March, 1925, was correct, and that this appeal should be dismissed with costs. They will humbly advise His Majesty accordingly.

Solicitor for appellants: *H. S. L. Polak.*

Solicitor for respondent: *Douglas Grant and Dold.*

A.M.T.

INSOLVENCY—FULL BENCH.

*Before Sir William Phillips, Kt., Officiating Chief Justice,
Mr. Justice Ramesam and Mr. Justice Madhavan Nair.*

*In re KANCHERLA KRISHNA RAO.**

1927,
August 24.

Presidency Towns Insolvency Act (III of 1909), sec. 7 and cls. 12 and 18 of the Letters Patent for the High Court of Madras—Garnishee proceedings—Garnishee living in Calcutta—Performance of contract by garnishee due in Madras—Jurisdiction of Insolvency Court, Madras, against garnishee.

Held by the Full Bench (1) that section 7 of the Presidency Towns Insolvency Act (III of 1909) confers jurisdiction on the High Court in garnishee proceedings even when the garnishee lives outside the territorial jurisdiction, (2) that clause 18 of the Letters Patent is not governed by clause 12 of the Patent but (3) that it is a matter of discretion for the Judge in each case to either allow any particular claim to be tried in the Insolvency Court or to direct the Official Assignee to file a suit therefor in the ordinary course.

GARNISHEE PROCEEDINGS in I.P. No. 267 of 1923, in the matter of Kancherla Krishna Rao, an insolvent. This

* I.P. No. 267 of 1923.