APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

1928
Mar. 12.

MAUNG YE AND OTHERS
v.
M. A. S. FIRM AND OTHERS.*

"Forbidden by law," "legally disqualified" person, meaning of—Contract Act (IX of 1872), s. 23—Transfer of Property Act (IV of 1882) s. 6 (h) (3), s. 78—Conditions of transfer and notice of transfer imposed by Government in oil-well grants—Disregard of such conditions by grantee and transferee, whether a private person can claim benefit of.

Grants of the right to win earth-oil are made by the Local Government in accordance with rules made by the Governor-General in Council and sanctioned by the Secretary of State for India in Council and under Executive Instructions. Some of the conditions of such grants are that every transfer of the right shall be reported to the Warden by the transferee, and that a grantee shall not alienate or transfer his rights except to a person holding a certificate of approval. Non-observance of these conditions renders in one case the transferee liable to a fine under the rules framed under the Burma Oil-Fields Act and the grantee in the other case stands to lose his grant.

Held, that such conditions do not make a mortgage of an oil-well void *ab initio* or the mortgagee a "legally disqualified" person within the meaning of s. 6 (h) 3) of the Transfer of Property Act, or the transaction a forbidden one within the meaning of s. 23 of Contract Act, simply because the mortgagee had no certificate of approval at the date of the mortgage and obtained it only subsequently. The mortgagee is also not guilty of "gross neglect" within the meaning s. 78 of the Transfer of Property Act so as to lose his priority over a subsequent mortgagee, because of his failure to report to the Warden the mortgage which has been duly registered.

Kyaw Din and *K. C. Bose* for the appellants.

Aiyangar and *Maung Pu* for the first and second respondents.

HEALD, J.—The M. A. S. Chetty firm, by its agent Letchumanan, sued the first three appellants to recover Rs. 22,660 with further interest on a mortgage bond, and joined a number of subsequent transferees of the mortgaged property.

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* Civil First Appeal No. 207 of 1927 against the judgment of the District Court of Magwe in Civil Regular No. 3 of 1926.

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Almost every imaginable defence was raised, such as denial of execution, want of consideration, fraud, defective registration, material alteration, incapacity of mortgagee, novation and loss of priority by gross neglect, but the District Court rejected all these defences and saying that the defendants were people who resisted their obligations by all means, fair or unfair, including perjury, gave the Chetty the usual preliminary mortgage decree.

The executants of the mortgage deed and one of the subsequent mortgagees of some of the mortgaged properties appeal, and another subsequent mortgagee who was joined in the appeal as a respondent has applied to be allowed to join as an appellant and has been heard as an appellant.

The grounds of the appeal are that the mortgage deed was not proved according to law, that it had been fraudulently altered, that at the time of the mortgage the M. A. S. firm did not hold a "certificate of approval" and was therefore debarred from holding a mortgage over oil-wells, and that, by reason of its gross neglect in failing to get the mortgage recorded at the office of the Warden of the Oil-Fields, it had lost priority in respect of its mortgage.

At the hearing in this Court the first two of these grounds, which were obviously untenable, were abandoned and only the other two were argued.

The suggestion that the mortgage was invalid because the mortgagee had no "Certificate of Approval" at the time when he took the mortgage is clearly unsustainable. A certificate of approval was in fact granted to the M. A. S. Chettyar firm in the name of its agent Kuttayan in May 1924 and since that date there can be no doubt of the firm's capacity to hold the mortgage. There seems to be no legal basis for the suggestion that a mortgage made in favour of a

mortgagee who did not hold a certificate of approval at the time when the mortgage was made is void *ab initio*. Grants of the right to win earth-oil are made by the Local Government in accordance with rules made by the Governor-General in Council and sanctioned by the Secretary of State in Council, and so far as sites (like the present sites) in the Twingon and Beme Reserves at Yenangyaung are concerned, under Executive Instructions issued by the Local Government itself. Those Executive Instructions provide a form of Grant of the right to win earth-oil and some of the conditions of those grants are that every transfer of the right shall be reported to the Warden by the transferee, that the grantee shall not alienate or transfer his rights except to such person as shall hold a certificate of approval, and that if he is guilty of a breach of the latter condition the Local Government may forthwith revoke the grant and take possession of the site. The transferee's failure to report transfers to the Warden is punishable with fine under statutory rules framed under the Burma Oil-Fields Act. It is suggested that because it is a condition of the grant that the grantee shall not transfer to a person who does not hold a certificate of approval, a person who does not hold such a certificate must be regarded as "a person legally disqualified to be a transferee" within the meaning of section 6 (*h*) (3) of the Transfer of Property Act and that therefore the transfer was void *ab initio* and could not be validated by the subsequent removal of the disqualification. I know of no authority which supports the contention that because a clause in a grant prohibits a transfer to a person who does not hold a certain certificate the person who does not hold the certificate is "legally disqualified to be a transferee," and I do not think that any such meaning was intended when the words "legally disqualified"

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were used. I would therefore hold that section 6 (*h*) (3) of the Transfer of Property Act has no application to the case and that there is no basis for the suggestion that the mortgage was void because the M. A. S. firm had no certificate at the time when it took the mortgage. For similar reasons I would hold that section 23 of the Contract Act has no application.

The only other point taken in appeal is that because the M. A. S. firm did not report the transfer to the Warden he was guilty of "gross neglect" within the meaning of section 78 of the Transfer of Property Act and therefore loses his priority. The mortgage bond in the firm's favour was duly registered and no authority for the proposition that failure to report to the Warden ought to be regarded as "gross neglect" has been cited. I have no hesitation in holding in the circumstances of this case that it did not amount to "gross neglect" and did not involve any forfeiture of priority.

These being the only points raised in the appeal, I would dismiss the appeal with costs, making the A. L. M. Chettyar firm jointly liable for the M. A. S. firm's costs in this Court.

MAUNG BA, J.—I concur.