APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Sen.

1940 *February* 29

VISHWESHWAR NARSABHATTA GADDADA (ORIGINAL PLAINTIFF), APPELLANT *v.* DURGAPPA IRAPPA BHATKAR AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Specific Relief Act (I of 1877), s. 23 (b)—Sale—Option to repurchase—Purchase money to be repaid within stipulated time—In default neither grantee nor his successors entitled to claim reconveyance—Right to repurchase whether assignable in favour of stranger.

On August 8, 1926, M as the manager of a joint Hindu family sold the suit property to defendant No. 1. On August 10, 1926, defendant No. 1 granted a permanent lease of the property to M and on the same day granted to M an option to repurchase the property at the price of Rs. 600 if the amount was paid in lump sum after five years, and within fifteen years from the date. It was stipulated in the agreement that if the amount was not paid within the period, neither M nor his successors-in-title would have any right to claim a reconveyance of the property subsequently. In 1930 M died and the property was inherited by his brother defendant No. 2. In 1933 defendant No. 2 assigned the right to repurchase the property to plaintiff for Rs. 600. On September 2, 1933, the plaintiff filed a suit claiming reconveyance of the property from defendant No. 1 and deposited Rs. 600 in Court on December 4, 1933. In Second Appeal it was held that the option of repurchase was not assignable and the suit was therefore dismissed. In appeal under the Letters Patent:

Held, that on the construction of the agreement, the option to repurchase the land was assignable as there was neither an express nor an implied provision that the option to repurchase was confined to the original grantee or to him and his family.

Vithoba Madhav v. *Madhav Damodar*,[1] and *Harkisandas* v. *Bai Dhanoo*,[2] disapproved.

Sakalaguna Nayudu v. *Chinna Munuswami Nayakar*,[3] relied on.

APPEAL under the Letters Patent against the decision of Lokur J. reversing the decree passed by G. H. Salvi, District Judge of Kanara at Karwar, who set aside the decree of M. S. Parulkar, Subordinate Judge of Sirsi.

Claim for reconveyance.

Property in suit originally belonged to Narsa, father of plaintiff. In 1901 Narsa sold it to one Haribhatta. After

*Appeal under the Letters Patent No. 10 of 1939.

(1) (1918) 42 Bom. 344. (2) (1933) 36 Bom. L. R. 290.
(3) (1928) L. R. 55 I. A. 243, s. c. 51 Mad. 533.

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Haribhatta's death, the property was inherited by his three sons, Mahableshwar, Rambhatta and Narayanbhatta. On August 8, 1926, Mahableshwar, as the manager of the family, sold the property to Durgappa (defendant No. 1) for a sum of Rs. 600. On August 10, 1926, Durgappa granted a permanent lease of the property to Mahableshwar and on the same date executed an agreement in favour of Mahableshwar to reconvey the property. The terms of the agreement were as follows :—

"You sold your malki lands to me on 8th August 1926 for Rs. 600 and gave into my possession the said lands which you asked me to give back to you in permanent tenancy which I did on 10th August 1926 ; and I have given them into your possession but as you asked me earnestly to execute an agreement to give back the properties if the amount of Rs. 600 which is the consideration for the sale is paid in a lump sum after five years and within fifteen years from this date, I consented and have now executed the agreement for reconveyance on the conditions mentioned below. Therefore, if in future after five years and within fifteen years from this date the amount of Rs. 600 being the consideration of the sale is paid at any time, I shall, without making any objection, reconvey your properties to you. On failure to reconvey as mentioned above and if objection is taken, I and my successors-in-title (*Uttaradhikaris*) are liable to make good the loss caused to you and to give back (release) the property. If the amount of the sale is not paid within the abovementioned period and get the properties released, neither you nor your successors-in-title (*Uttaradhikaris*) have any right to claim a reconveyance (release) of the property subsequently."

Mahableshwar and Narayanbhatta died in or prior to 1930, leaving Rambhatta as the sole surviving co-parcener. By a deed dated June 23, 1933, the right of option to repurchase was sold by Rambhatta to Vishweshwar (plaintiff) for Rs. 400.

On September 2, 1933, plaintiff filed a suit against Durgappa (defendant No. 1) and Rambhatta (defendant No. 2) claiming redemption on the basis that the transaction of 1926 was really a mortgage but subsequently sought an amendment of the plaint by adding a claim for reconveyance under the agreement of August 10, 1926.

The defendants contended *inter alia* that the suit was not maintainable as the right of repurchase was non-transferable.

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The Subordinate Judge dismissed the suit on the ground that the option of repurchase was not assignable.

On appeal, the District Judge held that the right to repurchase the property was transferable as there was nothing in the agreement to indicate that the object of passing the document was that the property should not be lost to the family of Mahableshwar. He, therefore, set aside the decree of the Subordinate Judge and decreed the suit by directing that defendant No. 1 do pass reconveyance of the property as prayed for.

The defendant No. 1 appealed to High Court. The appeal was heard by Lokur J. who set aside the decree of the District Judge and restored the decree of the trial Court, holding that the option of repurchase was not assignable. He gave reasons as follows :—

LOKUR J. Defendant No. 2's undivided brother Mahableshwar sold his family land to defendant No. 1 for Rs. 600 on August 8, 1926 (exhibit 18). Two days later he obtained a perpetual lease from defendant No. 1 and also an agreement (exhibit 48) whereby defendant No. 1 agreed to reconvey the land to Mahableshwar after five years and within fifteen years if the purchase price was repaid. Mahableshwar having died, defendant No. 2 is the sole surviving member of the joint family. He assigned the right of repurchase under the agreement (exhibit 48) to the plaintiff on June 23, 1933 (exhibit 41). The plaintiff treated the right of repurchase as a right to redeem, and he filed this suit to redeem the alleged mortgage under the Dekkhan Agriculturists' Relief Act or, in the alternative, to specifically enforce the right of repurchase granted to his assignor under the agreement (exhibit 48). Various objections were put forward by defendant No. 1 to the plaintiff's claim, but ultimately the issue in dispute between the parties was narrowed down to this: "Whether the

right of repurchase was non-transferable as contended by the defendant No. 1 ?" This was issue No. 4 in the trial Court. It was held that the right of repurchase was non-transferable and the plaintiff's suit was dismissed with costs.

In appeal the learned District Judge took a different view and held that the right of repurchase could be assigned, and passed a decree in favour of the plaintiff ordering that the amount deposited by him should be paid to defendant No. 1, that defendant No. 1 should pass a reconveyance of the property and that the plaintiff should recover possession of the property as well as future mesne profits from the date of the deposit of the amount in Court and also recover his costs from defendant No. 1.

Defendant No. 1 has now come in appeal to this Court and the same issue is argued here, viz., whether the right to repurchase the property in this case was not transferable.

Section 23 of the Specific Relief Act provides that the specific performance of a contract may be obtained by any party thereto or by the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed.

It is contended on behalf of defendant No. 1 that in this case the personal quality of the vendor Mahableshwar was a factor which was taken into consideration when the agreement of repurchase was entered into on August 10, 1926. The expression "personal quality" has been explained

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by Beaman J. in *Vithoba Madhav* v. *Madhav Damodar*[1] as follows (p. 350) :—

"Personal quality need not necessarily be restricted to particular skill or learning but may include anything peculiar to a man or his descendants which would entitle them to especial favour at the hands of other contracting parties."

And the real question in this case is whether there was any such personal quality which affected the right of repurchase.

The material part of the agreement (exhibit 48) runs as follows :—

"But as you asked me very earnestly to execute an agreement to give back the properties if the amount of Rs. 600 which is the consideration for the sale is paid in a lump sum after five years and within fifteen years from this date, I consented and have now executed the agreement for reconveyance on the conditions mentioned below. Therefore, if in future after five years and within fifteen years from this date the amount of Rs. 600 being the consideration of the sale is paid at any time, I shall, without making any objection, reconvey your properties to you. On failure to reconvey as mentioned above and if objection is taken, I and my *Uttaradhikaris* are liable to make good the loss caused to you and to give back the property. If the amount of the sale is not paid within the abovementioned period and the property is not got released, neither you nor your *Uttaradhikaris* have any right to claim a reconveyance of the property subsequently."

The learned Subordinate Judge has translated the word "*Uttaradhikaris*" as descendants, while the learned District Judge has understood it to mean "successors-in-title". It is not really necessary for the decision in this case to ascertain what was really intended by the parties to the document by the word "*Uttaradhikaris*"; but from the meaning given to that word in Apte's Sanskrit-English Dictionary it seems that ordinarily it means descendants or heirs. In the document which was considered in *Kuppa* v. *Mhast*[2] the word was used in the sense of "wife" or "any male issue" (*vide* page 640). In the agreement in the present case (exhibit 48) defendant No. 1 agreed to reconvey the land to the vendor ("to you"). There it does not refer to the vendor's heirs or assignees or *Uttaradhikaris*. It is

[1] (1918) 42 Bom. 344. [2] (1930) 33 Bom. L. R. 633.

only in the last portion that he says that if the amount of the sale is not paid in time, then the vendor or his *Uttaradhikaris* will have no right to claim a reconveyance of the property. In the preceding sentence he says that he (defendant No. 1) and his *Uttaradhikaris* can be made liable to make good the loss caused to the vendor if the reconveyance is refused although it was sought for in time. In that case the *Uttaradikaris* could not include the assignees. But the main question is whether the agreement was personal and intended for the benefit of the family of the vendor.

Ordinarily where a person sells his property to another and the vendee enters into a contract to convey the property back to the vendor or his heirs, the right to obtain a reconveyance from the vendee or his heirs is assignable even to a stranger and can be enforced by the assignee. Where, however, the intention of the parties is that the vendor or his heirs alone have the right of repurchasing the property, the assignee outside the family cannot enforce the contract specifically. This rule is laid down in *Harkisandas* v. *Bai Dhanoo*[1] after a full discussion of the decided cases on the point. In *Vithoba Madhav* v. *Madhav Damodar*[2] the judgment-debtor had sold his property to the decree-holder on condition that after ten years and within two years thereafter the vendor or his descendants should be allowed to repurchase the land for the price paid and that after the death of the vendor, his son was his only descendant, and on his death the vendor's widow assigned the right of repurchase and the assignee brought a suit to enforce it specifically. It was there held that the intention of the parties was that the vendor and his descendants alone should exercise the right of repurchase and that a stranger to whom that right was assigned should

[1] (1933) 36 Bom. L. R. 290. [2] (1918) 42 Bom. 344.

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not enforce it specifically. The reason for that view was thus given by Beaman J. (p. 349) :—

"The sentiment of the agricultural classes in this country towards their land is well-known to every Judge of experience ; and we can well understand that the creditor may have so far relented as to have given his debtor this *locus paenitentiæ* after the lapse of ten years and so enable him to get back his family land. Founding the motive of the whole contract in this sentiment, it would be apparent that the vendee would have had no like inducement to allow any stranger to buy this land from him after the lapse of ten years at the price he had paid for it. There may have been a very good and sufficient reason why he should have made this concession to the original owner of the land and his descendants, meaning by that term his family, but we can see no reason whatever why the vendee should have bound himself in like manner to sell to anyone who had no previous connection with or interest in the land."

In this case also the wording of the agreement contained in exhibit 48 indicates that the right of repurchase was given to the vendor. In the very beginning of the document the vendee specifically says that as the vendor begged him to execute such an agreement, he had consented and was therefore going to execute it.

The ruling in *Chinna Munuswami Nayudu* v. *Sagalaguna Nayudu*,[1] which was confirmed by the Privy Council in *Sakalaguna Nayudu* v. *Chinna Munuswami Nayakar*[2], does not in any way conflict with the decision in *Vithoba Madhav* v. *Madhav Damodar*.[3] In that case by a deed of sale in 1891 the vendor, on behalf of himself and as guardian of his minor son, sold a village to one Venkatapathi Nayudu, and on the same day he entered into an agreement that the vendee should reconvey the village to the vendor in the Ani-cultivation season of the thirtieth year. After the death of the vendor, his son assigned his interest under that agreement to one Chinna Munuswami who filed a suit to enforce the agreement. The Madras High Court held that as the agreement was a completed contract the interest

[1] (1925) 49 Mad. 387. [2] (1928) L. R. 55 I. A. 243, s. c. 51 Mad. 533.
[3] (1918) 42 Bom. 344.

under it was assigned and passed to the vendor. In the course of the judgment Spencer J. observed (p. 391) :—

"I think that there was no personal element in this transaction which would make the contract incapable of being specifically enforced under section 21 (*b*) of the Specific Relief Act."

And Ramesam J. based his decision on the fact that the term of thirty years made it clear that the option was not intended to be personal. The Privy Council, when confirming the decision of the Madras High Court, in *Sakalaguna Nayudu's* case,[1] followed the same reasoning and observed that the terms of the contract and the time at which the option was to be exercised went to show that the intention was that the option might be exercised by the vendor or his heirs, and the fact was not disputed that if the transaction amounted to a completed contract, the benefit of that contract could be assigned. Thus in all such cases the question turns upon the interpretation of the wording of the agreement and the circumstances under which it was executed.

In *Harkisandas* v. *Bai Dhanoo*[2] there were two circumstances which were regarded as sufficient to hold the right of the purchase to be not transferable, viz. (1) that the vendor was related to the vendee and (2) that the sale-deed contained a stipulation that the vendor was given the right to occupy the ground floor of his house during his lifetime. From these it was inferred that the vendor was so fond of his house that he was not prepared to give up his possession, and in spite of the sale he secured a concession that he should be allowed to occupy a portion of it. In the same way in this case also the vendor Mahableshwar, although he sold the property to defendant No. 1, was unwilling to part with his possession and so he managed to obtain a permanent lease from him before the sale-deed was registered. This is said to be the only property of the family, and as observed in *Vithoba Madhav* v. *Madhav*

[1] (1928) L. R. 55 I. A. 243, s. c. 51 Mad. 533.

[2] (1933) 36 Bom. L. R. 290.

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Damodar[1] he must have been compelled by circumstances to part with it, and in order that his family may not lose the whole land for ever, he appealed to the vendee and the vendee "relented" and allowed him a chance to recover his property if he was prepared to pay the price within a fixed period. Defendant No. 1 says in his statement:

"Mahableshwar came with one Hootan Krishnappa to my mill and pressed me to give such an agreement saying that it was his ancestral and only property and that as it was sold for family necessity, he did not wish it to be lost to the family. He said that in tears. Being moved, I agreed and so exhibit 48 was the result."

Thus all the circumstances which existed in *Harikisandas* v. *Bai Dhanoo*[2] are present in the present case, and I think the view taken by the trial Court is correct. Following the reasoning of that ruling, I hold that the right of repurchase in this case was not assignable and the plaintiff cannot specifically enforce it.

I allow the appeal, set aside the decree of the District Court and restore that of the trial Court.

Respondent No. 1 shall pay the costs of the appellant throughout.

THE plaintiff appealed under the Letters Patent.

G. P. Murdeshwar, for the appellant.

D. R. Manerikar, for respondent No. 1.

R. A. Mundkur, for respondent No. 2.

BEAUMONT C. J. This is an appeal under the Letters Patent from a decision of Mr. Justice Lokur, as he then was, in second appeal. The plaintiff is suing to recover the suit property from defendant No. 1, and the material facts are these.

The suit property at one time belonged to the father of the plaintiff, and he sold it in 1901 to the father of defendant No. 2. The father of defendant No. 2 died prior to 1926, leaving three sons, the eldest of whom was named Mahableshwar. On August 8, 1926, Mahableshwar, as the

[1] (1918) 42. Bom. 344. [2] (1933) 36 Bom. L. R. 290.

manager of the family, sold the suit property to defendant No. 1 for a sum of Rs. 600. On August 10, that is two days later, defendant No. 1 granted a permanent lease of the property to Mahableshwar, which lease, the learned Subordinate Judge says, came to an end for non-payment of rent, and nothing turns upon that. On the same day defendant No. 1 granted to Mahableshwar an option to repurchase the property at the price of Rs. 600, the option being contained in exhibit 48, to which I will refer more particularly in a moment. Mahableshwar and the third brother died in or prior to 1930, leaving defendant No. 2 as the sole surviving coparcener. In 1933 defendant No. 2 assigned his right to repurchase under exhibit 48 to the plaintiff for Rs. 400. On September 2, 1933, the plaintiff filed this suit, claiming redemption on the basis that the transaction was really a mortgage, but subsequently the plaint was amended by adding a claim for reconveyance under exhibit 48, and thereafter the plaintiff abandoned the claim that the transaction was a mortgage. On December 4, 1933, the plaintiff deposited Rs. 600 in Court, being the purchase money payable under exhibit 48. The learned Subordinate Judge of Sirsi dismissed the plaintiff's suit on the ground that the option of repurchase in exhibit 48 was not assignable. The learned District Judge of Kanara in appeal reversed that decision and decreed the plaintiff's suit. In appeal to this Court Mr. Justice Lokur reversed the decision of the lower appellate Court and restored the decree of the trial Court, holding that the option of repurchase was not assignable, and the question is whether that decision is right.

There can be no doubt that both under the common law and under s. 23 (*b*) of the Specific Relief Act an option to repurchase property is *prima facie* assignable, though it may be so worded as to show that it was to be personal to the grantee and not assignable. Under s. 23 (*b*) of the Specific Relief Act, 1877, it is provided that the specific

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performance of a contract may be obtained by the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed.

The question, therefore, is whether on the true construction of exhibit 48 the option to repurchase is made non-assignable. That document is addressed to Mahableshwar, manager of the family, and recites:

"You sold your *mulki* lands to me on August 8, 1926, for Rs. 600 and gave into my possession the said lands which you asked me to give back to you in permanent tenancy which I did on August 10, 1926; and I have given them into your possession; but as you asked me earnestly to execute an agreement to give back the properties if the amount of Rs. 600 which is the consideration for the sale is paid in a lump sum after five years and within fifteen years from this date, I consented and have now executed the agreement for reconveyance on the conditions mentioned below. Therefore, if in future after five years and within fifteen years from this date the amount of Rs. 600 being the consideration of the sale is paid at any time, I shall, without making any objection, reconvey your properties to you."

Then lower down it provides that:

"If the amount of the sale is not paid within the abovementioned period and get the properties released, neither you nor your successors-in-title have any right to claim a reconveyance of the property subsequently."

It seems to me in the first place that on the true construction of that document the option to repurchase was part of the original contract for sale. I mention that point, because in the trial Court an issue was raised as to whether there was any consideration for the option, and the learned trial Judge held that it was a case of mutual promises, each constituting consideration for the other, as in the case of a contract for sale. That is clearly wrong. There is no special consideration given for the option, and, as there is no obligation on the grantee to exercise the option,

if the option stood by itself, it would be without consideration. But I feel no doubt on the wording of the document, particularly the use of the past tense in the expressions "you asked me earnestly to execute an agreement" and "I consented", that the whole transaction for purchase and repurchase was one. Therefore, there was consideration for the grant of the option. In the lower appellate Court, and in second appeal, the only question argued was whether the exercise of the option was confined to the grantee and to members of his family, or whether it could be assigned to a stranger. Upon the construction of the document I can see no reason for holding that the grantee was not to be at liberty to assign the benefit of the contract to anyone he chose. I would note in passing that in England a contract of this sort creates an equitable estate in the land which would bind a purchaser with notice, but, as equitable estates are not recognised under Indian law, the rights of the parties have to be dealt with *ex contractu*. However, as the original grantor of the option is before the Court, this point is not material.

Mr. Justice Lokur decided that the option was not assignable on the strength of a decision of this Court in *Vithoba Madhav* v. *Madhav Damodar*[1] and a later decision of this Court, following that case, in *Harkisandas* v. *Bai Dhanoo*.[2] In *Vithoba Madhav* v. *Madhav Damodar*[1] the contract of resale was worded differently to the contract in the present case, and therefore the case is not an authority binding upon us; but it is argued that we should follow and apply the reasoning upon which the decision was based. The reasons are stated by Mr. Justice Beaman in the following terms (p. 349) :—

"The sentiment of the agricultural classes in this country towards their land is well-known to every Judge of experience; and we can well understand that the creditor may have so far relented as to have given his debtor this *locus pœnitentiæ*

[1] (1918) 42 Bom. 344.

[2] (1933) 36 Bom. L. R. 290.

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after the lapse of ten years and so enable him to get back his family land. Founding the motive of the whole contract in this sentiment, it would be apparent that the vendee would have had no like inducement to allow any stranger to buy this land from him after the lapse of ten years at the price he had paid for it. There may have been a very good and sufficient reason why he should have made this concession to the original owner of the land and his descendants, meaning by that term his family, but we can see no reason whatever why the vendee should have bound himself in like manner to sell to anyone who had no previous connection with or interest in the land. That being my view of the true nature of the sale-deed of 1903 and the intention of the parties when the reservation clause was made, it follows that assignees outside the family could not enforce the contract specifically.

"This would then be a case of personal quality mentioned in section 23 of the Specific Relief Act."

Mr. Justice Heaton also recognized that the decision turned on the terms of the particular contract with which the Court had to deal. But he says in the course of his judgment (p. 351) :—

"In England a right of this kind would be assignable unless it were shown not to be so. But in India I think the sentiment of the people as regards ownership of land is altogether antagonistic to the English idea of assignability. In the first instance, one would assume that where there was an agreement to sell back family land to a member of the family, that agreement was intended to subsist only for the benefit of the members of that family."

The actual decision may have been justified by the terms of the particular contract in question ; but I must confess that I have great difficulty in following the reasoning on which it was based. The principle enunciated by the learned Judges seems to come to this, that the agricultural classes in India have a sentimental regard for their land, that the Court will take judicial notice of such sentiment and will assume it to exist without any evidence and notwithstanding the fact that the particular agriculturist concerned has shown a desire to sell his land to a stranger, that this sentimental regard is a personal quality of an agriculturist within s. 23 of the Specific Relief Act, and accordingly a contract to resell land to an agriculturist must be construed differently to a contract to resell land to any one else, in the former case the presumption being that the contract is intended to be personal, whereas in the latter case the

presumption is that it is assignable. If any such rule as that is to be enacted, it should be by the Legislature and not by the Courts. It is obvious that without definitions there would be difficulty in working such a rule; who is to be an agriculturist within the meaning of the rule? and what land is to be affected by it: is it to be only ancestral land, or is it to include self-acquired property? Moreover, the learned Judges do not seem to have appreciated that the benefit which they sought to confer on the grantor of the option by restricting its exercise to the original grantee and his family is largely illusory, because, if the grantee desired to sell the land to a stranger, he need only exercise the option himself, and the next day sell the land to the stranger. In the particular case, with which we have to deal, the period of the option has not yet expired. If Mr. Justice Lokur's view that the option could not be assigned to the plaintiff is right, there is nothing to prevent defendant No. 2 from exercising the option himself, paying Rs. 600 under it to defendant No. 1, and then selling the land to the plaintiff for Rs. 1,000, in which case precisely the same result would be arrived at as if the option were assignable.

In my view, the reasoning of the learned Judges in *Vithoba Madhav* v. *Madhav Damodar*[1] cannot be supported on principle, and I think also that it is inconsistent with the decision of the Privy Council in *Sakalaguna Nayudu* v. *Chinna Munuswami Nayakar*.[2] In that case the property in suit was a village, and on the sale of the village an option had been given to the vendor to repurchase within a period of thirty years. The option had been assigned to the plaintiff, and the Privy Council, confirming the decision of the High Court of Madras, held that the option was assignable. No suggestion was made that in dealing with options for repurchase of land in India any special presumptions should be called in aid. I can see no reason

[1] (1918) 42 Bom. 344. [2] (1928) L. R. 55 I. A. 243, s. c. 51 Mad. 533.

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why a man should be presumed to have less sentimental regard for his ancestral village than for his ancestral field. In the judgment of Mr. Justice Ramesam, one of the learned Judges of the High Court of Madras who decided the case, this argument is referred to at p. 400, and the learned Judge says :

> "Mr. Varadachari has conceded that the family of Subrahmanya Ayyar was the object of Venkatapathi Nayudu's bounty and the option may be exercised by the heirs, but argued that it is not assignable. But this seems to be a distinction without any principle to support it."

So that the actual point, that the option was limited to the grantee and his family, was raised in the High Court, and the argument found no favour there, or in the Privy Council. It seems to me that that case is inconsistent with the principle that there is some special rule applicable to options for repurchase given to members of the agricultural classes in India. The other case on which Mr. Justice Lokur relied, *Harkisandas* v. *Bai Dhanoo*,[1] may also have been justified as a decision on the particular contract there in suit, but I think that the reasoning, which followed that in *Vithoba Madhav* v. *Madhav Damodar*,[2] cannot be supported. If parties desire that the exercise of an option to repurchase land is to be confined to the original grantee, or to him and his family, they must so provide in the document creating the option. There is no such provision, express or implied, in exhibit 48.

In my opinion, there is no ground in this case for saying that the option contained in exhibit 48 is not assignable, and I think that the decision of the learned District Judge was right.

The appeal, therefore, must be allowed with costs both of the hearing in this Court and before Lokur J. and the order of the District Judge restored.

SEN J. I agree.

Appeal allowed.

J. G. R.

[1] (1933) 36 Bom. L. R. 290.

[2] (1918) 42 Bom. 344.