

Privy Council Appeal No. 47 of 1918.

Ramathai Vadivelu Mudaliar - - - - - *Appellant*

v.

Peria Manicka Mudaliar and others - - - - - *Respondents*

Same - - - - - *Appellant*

v.

Naga Ponnambala Mudaliar, since deceased, and others - - - *Respondents*

(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH FEBRUARY, 1920.

Present at the Hearing :

VISCOUNT CAVE.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* 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 Sundarammal was the owner of certain lands in the village of Kovur and elsewhere in the Chingleput district, 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 310A of the Civil Procedure Code and to provide for her other debts, entered into an agreement with four persons named Murugappa, Kandasami, Munisami and Ponnambala, 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 above-named (who will be referred to as "the vendees") on the 10th August, 1902; and on the 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 the 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 mortgagees; 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 realisation. 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 the 14th March, 1904, obtained a decree for sale. The sale was fixed for the 3rd May, 1905; and it is obvious that the persons claiming under the deed of 1902 ran the risk, unless they made 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 Murigappa, 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 above-mentioned 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 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 suits 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* (I.L.R., 42 Mad. 616) 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 subsequent 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.

In the Privy Council.

RAMATHAI VADIVELU MUDALIAR

v.

PERIA MANICKA MUDALIAR AND OTHERS.

SAME

v.

NAGA PONNAMBALA MUDALIAR, SINCE
DECEASED, AND OTHERS.

(Consolidated Appeals.)

DELIVERED BY VISCOUNT CAVE.