

WICKRAMSINGHE
v.
CORRINE DE ZOYSA

COURT OF APPEAL
WEERASURIYA, J., AND
DISSANAYAKE, J.
CA NO. 200/83 (F)
DC COLOMBO NO. 3422/ZL
SEPTEMBER 12, OCTOBER 3 AND
DECEMBER 4, 2000

Declaration that deed void – Reduction of extent donated – Alienation of immovable property by minor – Does it require sanction of court – Roman Dutch Law and English Law principles.

The plaintiff-appellant instituted action seeking a declaration, that a certain deed/plan is void and a declaration that she is entitled to an undivided 1/3 share. The defendant-respondent whilst denying the averments, prayed for the dismissal of the action. The District Court held with the defendant-respondent.

On appeal –

It was contended that deed No. 2078 terminating co-ownership is prejudicial to the plaintiff-appellant (a minor), in that it has resulted in a reduction of the interests she got on her title deed, and that the said deed is *ipso jure* void since alienation of immovable property by a minor requires sanction of Court.

Held:

- (1) Despite that deed No. 2078 had the effect of reducing the rights which the plaintiff-appellant was entitled to, it cannot be gainsaid that deed No. 2078 has caused the plaintiff-appellant the owner of a divided and distinct unit, viz premises No. 14/2.
- (2) The Roman Dutch Law relating to ratification is in force in Sri Lanka. The Roman Dutch Law permits ratification after majority, of an invalid contract of a minor and differs from the English Law, which denies to a minor the right to ratify certain classes of contract.

- (3) In our law a contract upon ratification by a minor after attaining majority becomes as binding upon him as if it had been executed after his majority and it is effective from the time the contract was made.
- (4) Ratification may be express or implied from some act by the minor manifesting an intention to ratify.

The facts clearly establish that there was implied ratification of the deed, by the plaintiff-appellant after attaining majority.

APPEAL from the judgment of the District Court of Colombo.

Cases referred to:

1. *Siriwardena v. Banda* – 12 CL Rep. 99 at 101.
2. *Gunasekara Hamine v. Don Baron* – (1902) 5 NLR 272.
3. *Manuel Naide v. Adrian Henry* – (1909) 12 NLR 259.
4. *Fernando v. Fernando* – (1916) 10 NLR 193.
5. *Silva v. Mohamadu* – (1916) 10 NLR 426.
6. *Siman Naide v. Asilin Nona* – (1945) 46 NLR 337.
7. *Noris Appuhamy v. Noris Singho* – (1966) 61 NLR 215.
8. *Karunadasa v. Podiappuhamy* – (1988) 1989 – (1) – 173.
9. *Raman Chetty v. Silva* – 15 NLR 286.

P. A. D. Samarasekera, PC with *R. Y. D. Jayasekera* for plaintiff-appellant.

L. C. Seneviratne, PC with *U. H. K. Wickramasinghe* and *S. Sumanasekara* for substituted 1A defendant-respondent.

Varuna Basnayake, PC with *Yamuna Kuruppu* for the substituted 2nd and 3rd defendant-respondents (in place of the deceased 1st defendant-respondent).

Cur. adv. vult.

April 6, 2001.

WEERASURIYA, J.

The plaintiff-appellant by her plaint dated 11. 04. 1980, instituted action 1 against the defendant-respondents, seeking *inter alia*:

- (a) a declaration that deed bearing No. 2078 dated 13. 03. 1975 and plan bearing No. 6450 dated 01. 06. 1974 be declared void; and
- (b) a declaration that she is entitled to undivided 1/3 share of the property described in the 2nd schedule to the plaint.

The 1st defendant-respondent in her answer whilst denying the averments in the plaint prayed for dismissal of the action. This case proceeded to trial on 16 issues and at the conclusion of the case, 10 learned District Judge by his judgment dated 13. 06. 1983, dismissed the action with costs. It is from the aforesaid judgment that this appeal has been lodged.

At the hearing of this appeal, learned President's Counsel appearing for the plaintiff-appellant submitted that the learned District Judge has misdirected himself in holding that the plaintiff-appellant, 1st defendant-respondent and 2nd defendant-respondent derive their title from deed No. 2078 dated 05. 01. 1975 attested by J. B. Puvimanasinghe, marked P4 and therefore they are lawful owners of premises bearing Nos. 14/1, 14/2 14/3 and 14/4, respectively. 20

The above contention of learned President's Counsel for the plaintiff-appellant was based on the following grounds :

- (a) that the execution of the deed No. 2078 (P4) has resulted in a reduction of the extent of property donated to plaintiff-appellant by deed No. 1876 (P3); and
- (b) that the said deed (P4) is *ipso jure* void since alienation of immovable property by a minor requires sanction of Court.

The Commissioner of National Housing has been made a party in this case as the entire property has been mortgaged in his favour. Therefore, he would be unaffected in which ever manner this case 30 is decided.

It is common ground that the late Sir Cyril de Soyza was the owner of the property described in the 1st schedule to the plaint and that flats bearing assessment Nos. 14/1, 14/2, 14/3 and 14/4 standing thereon were constructed by him and deed bearing No. 1660 dated 09. 11. 1971 and deed bearing No. 1876 dated 19. 12. 1972 (P2 and P3, respectively) have been executed by him. By deed bearing No. 1660 (P2) Sir Cyril de Soyza donated *inter alia* premises bearing Nos. 14/1 and 14/3 to the 1st defendant-respondent, premises bearing No. 14/2 to the plaintiff-appellant and premises bearing No. 14/4 to the 2nd defendant-respondent. Thereafter, Sir Cyril de Soyza by deed bearing No. 1876 dated 19. 02. 1972, donated the same property to the plaintiff-appellant, 1st defendant-respondent and 2nd defendant-respondent in equal undivided shares. 40

By deed of declaration bearing No. 2078 dated 05. 01. 1975 (P4), parties terminated co-ownership of the flats and apportioned premises bearing Nos. 14/1 and 14/3 to the 1st defendant-respondent, premises bearing No. 14/2 to the plaintiff-appellant and premises bearing No. 14/4 to the 2nd defendant-respondent as divided and distinct units. The donor Sir Cyril de Soyza has subscribed as a witness to the aforesaid deed marked P4. 50

It is to be observed that at the time of the execution of deed marked P4 the plaintiff-appellant remained a minor being only 18 years and 2 months of age as evident from the birth certificate marked P1.

Learned President's Counsel for the plaintiff-appellant submitted that dealings by minors with their immovable property are treated as a class apart from generality of minor's contracts and such transactions should receive the approval of Court. In support of this contention he referred to the following passage from *The Law of Contracts* by Prof. Weeramantry (page 439): 60

"Dealings by minors with their immovable property are treated as a class apart from the generality of minor's contract. Chief

among the special rules they attract is the requirement that the transaction should receive the approval of Court."

The substance of the argument of learned President's Counsel for plaintiff-appellant is that the execution of deed bearing No. 2078 is prejudicial to the plaintiff-appellant in that it has resulted in a reduction of the interests she got on deed No. 1876 (P3). This proposition was based on the ground that the premises No. 14/2 which she got on deed No. 2078 (P4) is less than undivided 1/3 share of the property ⁷⁰ described in the 2nd schedule to the plaint, namely an undivided 1/3 share of the four flats.

In examining the question whether the change that was sought to be effected by deed No. 2078 (P4) was to the detriment or to the disadvantage of the plaintiff-appellant, it is vital to bear in mind that the donor had intended of gifting the flats in divided ownership to all the donees as evident from deed No. 1660 (P2). Undoubtedly, it was not possible for the donor, in law, to donate condominium property at the time when deed No. 1660 (P2) came to be executed in divided shares. The Apartment Ownership Law came into effect ⁸⁰ on 20. 03. 1973. This explains why the donor resorted to by means of deed No. 1876 (P3) to donate the same premises to the plaintiff-appellant, 1st and 2nd defendant-respondents in undivided shares. (vide page 3 – 2nd paragraph of P3). The deed No. 2078 (P4) and condominium plan (P5) terminated undivided ownership of the flats bearing Nos. 14/1, 14/2, 14/3 and 14/4 and apportioned premises bearing Nos. 14/1 and 14/3 to the 1st defendant-respondent, 14/2 to the plaintiff-appellant and 14/4 to the 2nd defendant-respondent in terms of the Apartment Ownership Law.

Despite a reference in the valuation report (P6) that deed No. 2078 ⁹⁰ (P4) had the effect of reducing the rights which the plaintiff-appellant was entitled to in the property, it cannot be gainsaid that deed No. 2078 (P4) has caused the plaintiff-appellant the owner of a divided and distinct unit, namely premises No. 14/2. Viewed in that context,

it is unfortunate, that the valuation report has been led in evidence without calling the valuation officer who could have explained the position *vis-a-vis* the divided possession of a single flat. The total absence of evidence, to controvert the position of the plaintiff-appellant has been emphasized as forming "an additional matter before Court" to accept the evidence led by the plaintiff-appellant; nevertheless it is open to the Court on evaluation of all the *material* placed before it, to come to a conclusion that it cannot accept such a proposition. ¹⁰⁰

Learned District Judge has justifiably rejected the claim that deed No. 2078 (P4) is prejudicial to the interests of the appellant.

The next question to be considered relates to minor's capacity to contract. Till the year 1916 judicial opinion has fluctuated in Sri Lanka on the effect and nature of a minor's contract. In 1892 Burnside CJ in *Siriwardena v. Banda*⁽¹⁾ at 101 expressed the view that the minor's conveyance was not, *ipso facto*, void but only voidable. Thereafter, opinion swung round to the view that such contract was void and not voidable. (Vide *Gunasekera Hamine v. Don Baron*⁽²⁾ and *Manuel Naide v. Adrian Henry*⁽³⁾). Thereafter, in *Fernando v. Fernando*⁽⁴⁾ and *Silva v. Mohamad*⁽⁵⁾ it was laid down that dealings by a minor with his property is not *ipso jure* void but voidable at his instance. ¹¹⁰

Thereafter, in *Siman Naide v. Asilin Nona*⁽⁶⁾ it was held that a sale of land without the sanction of a competent Court is voidable and not void.

In *Noris Appuhamy v. Noris Singho*⁽⁷⁾ it was held that a deed of transfer of immovable property executed by a minor is voidable and not void. ¹²⁰

In *Karunadasa Rajapaksa v. Podiappuhamy*⁽⁸⁾ it was held that alienation of a property by a minor is *prima facie* void but it can be ratified either expressly or impliedly by the minor on attaining majority.

On a survey of these cases, it would emerge that the long controversy relating to the question whether a minor's unassisted contract relating to immovable property was void or voidable has now been set at rest.

Professor T. Nadarajah in his article entitled: *The Contracts of Minors in the Modern Roman Dutch Law* (1953) University of Ceylon Review Vol. XI page 65) stated as follows:

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"Where a contract entered into by a minor with or without the assistance of a guardian or by a guardian on behalf of him has been executed by the alienation of immovable property of the minor without the sanction of Court, the alienation is prima facie void, as against the minor, and the guardian before majority or the minor during or after a minority is entitled to vindicate the property. But, the alienation is not strictly devoid of legal effect inasmuch as it is not open to the alienee to assert that the alienation was invalid, as the alienation is capable of being made binding on the minor by being ratified either expressly or impliedly by him on his attaining majority, and as the alienation will be held to be valid even as against the minor where the alienee has been misled, "by the minor expressly or impliedly representing himself to be of full age".

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It was held in *Raman Chetty v. Silva*⁽⁹⁾ that the Roman Dutch Law relating to ratification is in force in Sri Lanka. The Roman Dutch Law permits the ratification after majority, of an invalid contract of a minor and differs from English Law which denies to a minor the right to ratify certain classes of contract. Thus, in our law, a contract upon ratification by a minor after attaining majority becomes as binding upon him as if it had been executed after his majority and it is effective from the time the contract was made.

Ratification may be express or implied from some act by the minor manifesting an intention to ratify. For example where a person with

full knowledge of his legal rights continues after majority to use as his own the subject-matter of a purchase made by him during minority he must be taken to have ratified the contract. In such a case the erstwhile minor will not be permitted to approbate and reprobate. Similarly, an attempt by the minor upon attaining majority to enforce his rights under the contract would be construed as a ratification of the contract. (vide *The Law of Contracts* Vol. I by Professor Weeramantry 1967 edition – page 417). 160

The following passage from Wille's *Principles of South African Law* (8th edition – page 76) is also relevant on this issue:

"A minor's unassisted contract may be repudiated by the guardian before the minor becomes of age or by the minor himself on attaining majority. If the minor has already performed in terms of the unassisted contract, he may recover what he has performed with the rei vindicatio (in the case of property other than money delivered) or with a condictio (in the case of money paid). If the guardian has not repudiated the contract, the minor on attaining majority, has an election to ratify or to repudiate the contract. If the minor ratifies the contract, it becomes as binding upon him as if it had been executed after his majority, and is effective from the time when it was originally entered into. Ratification may be express, or may be implied from some unequivocal act by the manifesting of an intention to ratify the contract. For example, where a minor who had purchased a motor cycle during his minority, continued to use it as his own after he reached full age, he was held liable for the purchase price." 170

Therefore, what remains to be considered is whether there was ratification (express or implied) by the minor of her unassisted contract after attaining majority. 180

Despite the assertion of the plaintiff-appellant that she has got less than 1/3 undivided share of the property set out in the second schedule to the plaint, it cannot be suppressed that instead of undivided rights in all the flats she has been bestowed a divided and distinct entity bearing No. 14/2.

The deed bearing No. 2078 contains plaintiff-appellant's signature as the second signature and below that her father's signature appears in the capacity as the power of attorney holder for the 2nd defendant-respondent. 190

On a close examination of the plaintiff-appellant's evidence, it is justifiable to conclude that the plaintiff-appellant knew at the time she signed deed No. 2078 (P4) or in any event shortly afterwards what she has signed.

Thus, it is safe to conclude that the plaintiff's father was aware of the existence of deed No. 2078 (P4) and its contents.

The manner in which the plaintiff-appellant came to know of the existence of deed bearing No. 2078 (P4) appears to be artificial in that her father and the Attorney-at-Law Kingsly Fernando had opportunity of coming to know of that deed having been to Sambamoorthy and Company, chartered accountants, to peruse accounts regarding the estate of Sir Cyril de Soyza. 200

The plaintiff-appellant has enjoyed the benefits under P4 by exclusive possession of premises No. 14/2 and obtained rent from the tenant commencing before the death of the donor. After her marriage upon a notice to quit which plaintiff-appellant herself had drafted, a request had been made to the tenant to vacate the premises. Thereafter, she occupied the premises as her matrimonial home. The fact that her husband sought to purchase premises bearing No. 14/1 is also relevant on the issue whether plaintiff-appellant 210

had known of the fact of the ownership of that flat by the 1st defendant-respondent. It is significant to note that the plaintiff-appellant did not take steps to repudiate the transaction after attaining majority and waited for a period of 2 1/2 years, to file the present action.

It would be pertinent to state that the plaintiff-appellant has come out with the present allegation for the first time after the demise of the donor (Sir Cyril de Soyza) only after the admitted ill feelings had set in between the parties due to the plaintiff-appellant's husband having to vacate premises No. 14/1 and hand-over possession ²²⁰ subsequent to the refusal of the 1st defendant-respondent, to the sale of the premises bearing No. 14/1.

The facts adverted to above would clearly establish that there was implied ratification of the deed (P4) by the plaintiff-appellant after attaining majority.

For the foregoing reasons, I proceed to dismiss this appeal with costs.

DISSANAYAKE, J. – I agree.

Appeal dismissed.