

LALITHA PADMINI
v.
JAYATUNGA

SUPREME COURT
AMERASINGHE, J.,
ANANDACOOMARASWAMY, J., AND
GUNAWARDANA, J.
S.C. APPEAL NO. 87/97
C.A. APPEAL NO. 330/88 (F)
D.C. COLOMBO NO. 4521/L
JANUARY 19, 1998.

Vindictory suit – Conflicting title deeds – Determination of superior title – Principle of exceptio rei vendita et traditae.

The defendant resisted the action on the basis that the land in suit one rood in extent described in schedule 1 to the plaint was owned by his wife Swarna Jayanthi on a deed of transfer D1 executed in 1959 by the original owner Charles Appu. At the time of the execution of D1, Charles Appu did not have title to the land as he had executed a conditional transfer of the entirety of the land in favour of one Podi Appuhamy deed P7 of 14. 10. 1957. Podi Appuhamy by deed P8 of 15. 5. 1961 retransferred the same to Charles Appu. Thereafter, Charles Appu conveyed the entirety of the land to his wife Charlotte, by deed P3 of 19. 7. 1961. Subsequently, Charlotte donated her rights to her daughter the plaintiff. The plaintiff never got possession of the land.

Held:

1. On the principle *exceptio rei vendita et traditae*, when Podi Appuhamy retransferred his title to Charles Appu, Charles Appu's title devolved on Swarna Jayanthi by operation of law. As such Charles Appu had no interests to convey to his wife Charlotte and consequently Charlotte could not have conveyed any interests to the plaintiff.
2. The plaintiff had not established a title superior to that claimed by the defendant's wife.

APPEAL from the judgment of the Court of Appeal.

L. V. P. Wettasinghe for the plaintiff-appellant.

Daya Guruge for the defendant-respondent.

Cur. adv. vult.

April 2, 1998.

ANANDACOOMARASWAMY, J.

This is an appeal from the judgment of the Court of Appeal allowing the appeal of the defendant. The plaintiff filed an application for Special Leave which was granted by this court, on the following question :

"Did deed D1 executed in 1959 convey title after the execution of deed PS in 1961 in favour of the original owner on the principle of *exceptio rei vendita et traditae*?"

The facts relevant to this appeal are briefly as follows :

Charles Appu was the original owner of the land in extent one rood described in schedule 1 to the plaint. The said Charles Appu executed a conditional transfer of this entirety to one Podi Appuhamy on deed 106 of 14. 10. 57 (P7) which was retransferred on deed 192 of 15. 05. 61 (P8). In the meantime by D1 Charles Appu transferred this land in 1959 to his daughter Swarna Jayanthi (said to be adopted) and son-in-law Elias Appuhamy. After the said retransfer, Charles Appu conveyed the entirety of the land to his wife Charlotte on deed 3806 of 19.07.61 (P3). Charlotte reserving her life interest by P1 donated her rights to the daughter of Charles and Charlotte, namely Lalitha Padmini the plaintiff in this case. Subsequently by P6 Charlotte transferred her life interest too to the plaintiff.

There are two sets of title deeds by which plaintiff and defendant's wife are alleged to have derived title. Admittedly Charles Appu did not have title when he transferred the land to his daughter Swarna Jayanthi, but soon after he derived the title after the retransfer on deed No. 192 of 15.05.61 (P8) from Podi Appuhamy to Charles Appu, Charles Appu by deed No. 3806 of 19.07.61 (P3) transferred his rights to his wife Charlotte.

The only question is whether defendant's deed of title 9147 of 12.07.59 (D1) being prior in time took precedence over deed No. 3806 of 19.07.61 (P3) by which plaintiff's predecessor Charlotte got title from Charles.

According to Roman Dutch Law principle of *exceptio rei vendita et traditae* when Podi Appuhamy transferred by P8 his right, title and interest to Charles, Charles' interest would have by operation of law devolved on Swarna Jayanthi presently the wife of Jayatunga. In that instance Charles would have had no interests to convey to his wife Charlotte and consequently Charlotte the widow could not have transferred any interests to Lalitha Padmini the plaintiff. Clearly, therefore the plaintiff's title does not supercede the title of the wife of the defendant and the plaintiff could not be said to have established a title superior to that claimed by the defendant's wife. Evidence on record shows Lalitha Padmini the plaintiff never got possession of this land. In those circumstances I am unable to conclude that the plaintiff had in any manner proved her title to the land by deeds nor prescribed to the land.

It is the contention of learned counsel for the appellant that deed of transfer D1 was in fact a gift and the Roman Dutch Law principle of *exceptio rei vendita et traditae* did not apply to deed D1. This was the view of the learned District Judge too, on the ground that no consideration passed on deed D1, but I find in the Notary's attestation in D1 it is clearly stated that consideration was acknowledged to have been received earlier. The learned District Judge's evaluation and his conclusion that the deed of transfer D1 was a gift is not borne out in any manner either by evidence or by any legal implication.

I am, therefore, of the view that the plaintiff's action must fail and the judgment of the learned District Judge must be set aside. I accordingly, affirm the judgment of the Court of Appeal dismissing the plaintiff's action with costs.

In my view this appeal is frivolous and is dismissed with costs fixed at Rs. 10,500.

AMERASINGHE, J. – I agree.

GUNAWARDANA, J. – I agree.

Appeal dismissed.