

1971 Present: H. N. G. Fernando, C.J., and de Krester, J.

S. M. SURABIEL SINGHO, Appellant, and P. DHARMASENA
and 3 others, Respondents

S. C. 278/67 (F)—D. C. Gampaha, 13513

Vendor and purchaser—Transfer of immovable property—Condition that vendor may re-purchase the property within a specified period—Subsequent transfer by the vendee to a third party—Rights of the original vendor or his successors in title as against the third party—Contract—Position when the same person unites in himself the character of creditor and debtor—Doctrine of merger.

An agreement by which a person binds himself to sell a land does not depend on the personality of the parties. In the absence of a provision to the contrary, the agreement is enforceable not only by the party (or his successors in title) who is entitled to the transfer of the property but also by a stranger to whom he has ceded his right. This principle would therefore be applicable to a case where a person is entitled to a re-conveyance of property (or an undivided share of it) which he has transferred to another subject to a right to re-purchase the property within a specified period.

Where A, who has purchased an undivided share belonging to B and C on condition that he should re-transfer that share to B and C on payment by them of a certain sum of money, subsequently buys B's share of the right of re-purchase, A's obligation to re-transfer the property becomes reduced in consequence of his becoming both obligor and obligee to a partial extent.

APPEAL from a judgment of the District Court, Gampaha,

C. Ranganathan, Q.C., with M. T. M. Sivardeen and K. Kanagaratnam, for the plaintiff-appellant.

No appearance for the defendants-respondents.

Cur. adv. vult.

March 2, 1971. H. N. G. FERNANDO, C.J.—

One Heras Singho was the owner of an undivided 3/8 share of certain land, which share is hereinafter referred to as "the property". Upon Deed P1 of 22nd May 1961 he sold the property to one Carthelis Appu for a sum of Rs. 400, but subject to the condition that Heras Singho shall have the right to re-purchase the property within a period of 5 years on payment of the sum of Rs. 400 together with interest at the rate of 8 per cent per annum. Carthelis Appu by the Deed P2 of 1963 transferred the property to the 1st defendant Dharmasena, but this transfer was subject to the same condition for re-transfer in favour of Heras Singho.

Heras Singho died unmarried and issueless sometime prior to the expiration of the 5-year period stipulated in P1, leaving as intestate heirs his father Podi Singho, his sister Alice and four children of his deceased sister Baby Nona. Immediately prior to the death of Heras Singho he had a right under the Deed P1 to ask for a re-transfer of the property, if he repaid the sum of Rs. 400 specified in P1 and also paid interest on that sum at the rate of 8 per cent per year. Since the property had been conveyed in 1963 to the 1st defendant that condition was binding also on the 1st defendant. But when Heras Singho died intestate the right to claim a re-transfer vested in his intestate heirs, one-half of that right vesting in the father Podisingho, a 1/4 of that right vesting in the sister Alice, and the other 1/4 of that right vesting in the four daughters of the sister Lily Nona.

By the Deed P3 of 8th April 1965, the father Podi Singho conveyed to the present plaintiff "all the rights title and interest I have from my said late son Heras Singho of re-purchasing the said premises". Thereafter Alice Nona and two of the four daughters of Baby Nona conveyed to the 1st defendant the rights which they had acquired in respect of this property as heirs of Heras Singho. The resulting position after the execution of P3 and P4 was that the plaintiff held 1/2 of the right to repurchase the property, that 1st defendant held 3/8 of that right, and that the other two daughters of Baby Nona held the remaining 1/8 of that right.

In an action filed on 14th May 1966 the plaintiff claimed a Conveyance of a 3/16 share of the land and brought into Court a sum of Rs. 350 purporting to be the amount due for the re-transfer of that share. It will be seen that the plaintiff, in seeking a 3/16 share of *the land*, was asserting his 1/2 of the right to purchase *the property*.

The learned District Judge has dismissed the plaintiff's action on two grounds, firstly that after the death of Heras Singho, the right to demand a re-transfer of the property did not pass to his heirs, and secondly, that the right to re-transfer is not divisible. Incidentally also, the learned Judge appears to have thought that even if a re-transfer could be sought by an heir of Heras Singho, the condition in the Deed P1 required that the full payment of Rs. 400 plus interest must be made therefor.

It is convenient to deal firstly with the last matter relied upon by the trial Judge, namely, that the sum of Rs. 350 was an insufficient payment by the plaintiff. It will be seen that, before the plaintiff instituted this action, the 1st defendant had by P4 acquired a 3/8 share of the right of re-purchase originally held by Heras Singho. In consequence of this acquisition by the 1st

defendant, the obligation of the 1st defendant to re-transfer the property had become partly merged in the 1st defendant himself, I would refer in this connection to Wessels on Contracts. 1st Edition, p. 765 *et seq* :—

“*Confusio*, in a wide sense, as a mode of extinguishing a right, occurs when two incompatible rights are united in one and the same person.”

“When, however, we speak of confusion in connection with the law of contract, we mean the discharge of a debt arising from the fact that the same person unites in himself the character of creditor and debtor.”

“This discharge is not based on performance or on waiver, but on the principle that a person cannot in the same capacity be his own creditor and debtor. A person cannot demand payment of himself or sue himself.”

“Confusion usually takes place where the creditor becomes the universal successor of his debtor or, vice versa, where the debtor becomes the universal successor of his creditor.”

“It may be stated generally that confusion takes place whenever a debtor succeeds in any way to the rights of his creditor.”

“If the creditor for the part of the debt becomes the universal successor of the debtor, the confusion takes place only as to the part for which he is creditor.”

In the instant case the 1st defendant, when he purchased this property became a debtor or obligor and was under an obligation to transfer the property if Rs. 400 plus interest at 8 per cent was duly paid to him. (I shall be showing later that the heirs of Heras Singho were in law entitled to make the payment and demand the re-transfer.) But by the acquisition under the Deed P4 of the interest which some of those heirs had in the right of re-purchase, the 1st defendant's obligations to transfer the property became reduced in consequence of his becoming both obligor and obligee to a partial extent.

According to P1, the maximum amount payable for the re-transfer of the property would have been Rs. 560, i.e. Rs. 400 plus Rs. 160 being interest for 5 years at 8 per cent. Since however, 3/8 of the right of re-transfer had become merged in the 1st defendant himself, the sum payable became reduced by 3/8, i.e., Rs. 560—Rs. 210. It will thus be seen that the amount of Rs. 350 which the plaintiff brought into Court did in fact cover

the value of the right which remained in Heras Singho's heirs after the merger of $\frac{3}{8}$ ths of that right in the 1st defendant. I am therefore of opinion that the Judge erred in thinking that the amount brought into Court by the plaintiff was insufficient.

I am in agreement with the learned District Judge that the right of re-transfer is not divisible, in the sense that any heir of the original owner cannot separately claim a transfer of only some share in the property, and that the obligation is to re-transfer the entirety of the property which is subject to the condition. But in this case the fact that the original property, i.e., the undivided $\frac{3}{8}$ share transferred by P1, could not be claimed in its entirety was due to the fact that the right to claim the entire property had become reduced by reason of the 1st defendant's own acquisition by P4. In the result, all that could thereafter be claimed by Heras Singho's heirs was $\frac{5}{8}$ ths of the property.

The plaintiff has claimed only a conveyance of a $\frac{3}{16}$ share of the land, that is to say, a $\frac{4}{8}$ and not a $\frac{5}{8}$ interest in the property. This is obviously because he concedes to the two other daughters of Baby Singho the remaining $\frac{1}{8}$ interest in the right of re-conveyance. But he has brought into Court the full consideration which would have been payable if the whole $\frac{5}{8}$ interest had been claimed in his plaint. Thus the 1st defendant has by merger acquired a $\frac{3}{8}$ interest in the right of re-conveyance and the plaintiff has brought into Court the full amount payable for a re-conveyance in respect of the remaining $\frac{5}{8}$ interest in the original property. The 1st defendant therefore stands to gain, and is in no way prejudiced, by the fact that the plaintiff has not chosen to demand a re-conveyance of the whole of the outstanding $\frac{5}{8}$ interest in the property. (Indeed he has joined the 2 daughters of Baby Nona, and could have claimed the whole $\frac{5}{8}$ interest.)

The remaining ground on which the learned Judge held against the plaintiff was that the right to re-purchase was not transmitted to the heirs of Heras Singho. In dealing with the *pactum de retrovendendo*, Voet (Gane's translation Vol. 3, p. 297) states the position as follows:—

“ Moreover not only does the seller sue on this agreement, but also his heir, according to the usual nature of agreements, the benefit of which enures to heirs just as much as to the actual parties to the agreements. So much is this so that if certain of the heirs do not wish to buy back, that right accrues to the remaining heirs.

This right again when available under agreement can be ceded even to a stranger, since it is not personal, and every right of action which has not been expressly excepted can be sold and ceded."

An agreement like the present one, by which a person binds himself to sell a land to another does not depend on the personality of the parties, and in the absence of provision to the contrary an agreement to sell a land to A can be enforced by the heirs of A.

In *Tikiri Menika v. Alwis*¹ (35 N.L.R. 372), this Court held that, where a deed of sale by one Loku Banda to the defendant included a condition for the re-transfer of land to Loku Banda, the condition was enforceable by Loku Banda's heirs; this, although the deed did not expressly provide that the heirs of Loku Banda had a right to the re-transfer. In so holding, the Court relied on the passages from Voet which I have cited above.

For these reasons, I would set aside the decree under appeal, and enter judgment for the plaintiff as prayed for, with costs in both Courts.

DE KRETZER, J.—I agree.

Appeal allowed.

¹ (1933) 35 N. L. R. 372.
