

PALIPANE
v
PALIPANE AND OTHERS

COURT OF APPEAL
DISSANAYAKE, J. AND
SOMAWANSA, J.
C.A. 365/94 (F)
D.C. MATALE 3881/LA
FEBRUARY 12, 2001 AND
JUNE 14, AND
JULY 10, 2002

Land Acquisition Act, section 10(1) – Steps to acquire – Dispute as to title – Reference to court – Transfer by minor – Does it convey title? – Void or voidable? – Restitution in integrum

The plaintiff-respondent (Acquiring Officer) had taken steps to acquire a certain land, and as there was a dispute regarding the title to the said land the dispute was referred to court for determination.

The position of the 5th defendant-appellant was that at the time of the execution of certain deeds, he was a minor and the failure to obtain permission from court for the due execution of the two deeds make the said deeds *ab initio* void in law.

The trial court rejected this contention.

Held :

- (i) Sale of immovable property by a minor without the sanction of a competent court is voidable and not void and the minor may relieve himself from the consequences of the contract by way of a regular action.
- (ii) In the instant case since the sale was by the 5th defendant-appellant–minor–himself it was necessary for him to seek the assistance of court to set aside the deed of transfer executed by him while he was a minor by means of *restitutio-in-integrum* or some equivalent legal proceedings, which he had failed to do upto date.
- (iii) Hence the deeds did convey title.

Per Somawansa, J.

"Roman Dutch Law is in accord with the general principle that a person cannot be a judge in his own cause, and that when he wishes to get rid of the effect of his own act he must seek the assistance of the court".

APPEAL from the Judgment of the District Court of Matale.

Cases referred to:

1. *Siriwardena v Banda* - 2 CLR 99
2. *Selohamy v Rapiel* - 1 SLR 99
3. *Gunasekera Hamine v Don Baron* - 2 Br 402
4. *Andiris Appu v Abanchi Appu* - 3 Br 12..
5. *Manuel Naide v Adrian Hamy* - 12 NLR 259
6. *Wijesooriya v Ibrahims* - 13 NLR 195
7. *Fernando v Fernando* - 19 NLR 193
8. *Breytenback v Frankel* (1913)-SLR App Div. 390
9. *Siman Naide v Asilin Nona* - 46 NLR 337
10. *Silva v Mohamadu* - 19 NLR 426

W. Dayaratne for defendant-appellant

Nizzam Kariapper for 7th and 8th defendant-respondents

Cur adv vult

August 30, 2002

SOMAWANSA, J.

The plaintiff-respondent who is the Land Officer and Acquiring Officer of the Matale District had taken steps to acquire the land described in the schedule to the plaint for a public purpose and as there was a dispute regarding the title to the said land he referred the dispute to Court for determination under section 10 (1) of the Land Acquisition Act. It is common ground that the land that has been acquired is a portion of a larger land called "Bandarawatte" in extent of 16 A. 1R. 33P. out of which 10 Acres belongs to the 1st to 4th and 6th defendants-respondents and the 5th defendant-appellant and the balance of 6A. 1R. 33P. belongs to the 3rd, 4th defendants-respondents and the 5th defendant-appellant. The position of the 7th and 8th defendants-respondents is that the 1st to 4th and 6th defendants-respondents and the 5th defendant-appellant who were co-owners of the said 10 Acres by deed No.

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926 dated 9.12.1981 transferred the said 10 Acres to the 7th and 8th defendants-respondents while the 3rd defendant - respondent by deed No. 287 dated 16.02.1979 and the 4th defendant-respondent and the 5th defendant-appellant by deed No. 923 dated 2.12.1981 transferred the entirety of the said 6 Acres, 1 Rood and 33 Perches to the 7th and 8th defendants-respondents and thus by the said 3 deeds of transfer they became entitled to the entirety of the said "Bandarawatta" in extent of 16 Acres 1 Rood and 33 Perches out of which 5 Acres and 2 Perches has been acquired by the plaintiff-respondent in his capacity as the Acquiring Officer. 20

It is also common ground that at the time the said two deed Nos. 923 and 926 were executed the 4th defendant- respondent and 5th defendant-appellant were minors. The position taken by the 5th defendant-appellant is that as at the time of the execution of these two deeds he was a minor and the failure to obtain permission from Court for the due execution of the said two deeds makes the said two deeds void in so far as to the rights of the 5th defendant- appellant as dealt with in the said two deeds. 30

When the case was taken up for trial on 16.07.1993 it appears that according to journal entry No. 24 the learned District Judge has recorded one issue, which is as follows:

Whether the deed No. 923 dated 2.12.81 and deed No. 926 dated 9.12.1981 convey title of the 5th defendant (appellant) to the 7th and 8th defendants. (respondents)

Thereafter the parties were directed to file written submissions. The learned District Judge having considered the written submissions and the documents produced by his order dated 28.06.1994 held in favour of the 7th and 8th defendants. It is from the said order that the 5th defendant-appellant has preferred this appeal. 40

At the hearing of this appeal the main contention of the counsel for the 5th defendant-appellant was that as at the time of execution of the said two deeds the 5th defendant-appellant being a minor permission of Court should have been obtained before execution of the said deeds. it was also contended that the 5th defendant-appellant did not derive any benefit from this conveyance. Hence as far as the rights of the 5th defendant-appellant is concerned the said deeds are *ab initio* void in law. On an examination of the writ- 50

ten submissions of the 5th defendant-appellant filed in the original Court it appears that he was contesting the validity of agreement No. 290 dated 19.02.1979 which incidentally is an agreement to transfer the land in extent of 10 Acres to which the 4th defendants-respondent and 5th defendant - appellant were not parties. The fact that the 4th defendant-respondent and 5th defendant-appellant are not parties to the said agreement is admitted in his written submissions and is not disputed by the 7th and 8th defendants-respondents.

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The decisions of our Courts on the effect of a minor's conveyance are conflicting and varying. In *Siriwardena v Banda*⁽¹⁾ it was held by Burnside, CJ and Withers, J that a minor's deed was not void but only voidable by express repudiation after attaining majority and that a second deed conveying the same interest did not amount to such repudiation. An opinion to the same effect was expressed by a Full Bench in *Selohamy v Rapie*⁽²⁾ These decisions were commented on and the Roman Dutch authorities as to the validity of contracts made by minors were considered in *Goonsekera Hamine v Don Baron*⁽³⁾ and it was held by Bonser, CJ and Wendt, J that at all events a donation by a minor under the Roman Dutch Law was null and void, inasmuch as a donation was by no means to the minor's benefit. The question of sale of land by a minor came up for consideration in *Andiris Appu v Abanchi Appu*⁽⁴⁾ and it was held that a sale by a minor was not only voidable but absolutely void. It appears that this judgment was founded solely on Van Leeuwen's Commentaries 1, 16, 9 Kotze's Translation Vol. 1 page 135 where it is stated that immovable property of a minor cannot be sold otherwise than with the consent of Court. This passage in Van Leeuwen however has reference only to the authority of guardians to deal with the property of their wards and hence has no relevance to the precise point under consideration in the instant case. The same view was taken in *Manuel Naide v Adrian Hamy*⁽⁵⁾. But the very same Judges in Manuel Naide's case held in *Wijesooriya v Ibrahims*⁽⁶⁾ that where a minor represented himself to be of full age and a sale by him though without the sanction of Court was not void. In *Fernando v Fernando*⁽⁷⁾ Ennis, J and Schneider, J decided that a minor's deed was not absolutely void and might be ratified by the minor when he attained majority. In that

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case Ennis, J also expressed the opinion that the distinction between void and voidable made by the latter day jurists was not clear in the Roman Dutch text books. 90

The Roman Dutch jurists enunciated as a general rule that contracts by minors are *ipso jure* void so as to ensure the protection of minors but did not make the prohibition absolute in every case for they then proceeded to specialise and say when such contracts are void *ab initio* and when they can be ratified. The defect of status could be cured in the case of contracts affecting movable property by the consent of the guardian and in the case of contracts effecting land by the consent of the Court. After the minor attained majority the defect could be cured by his ratification express or implied. 100 Whenever a minor obtained a benefit from the contract there was no complete prohibition and whether or not he obtained a benefit was a question of fact. In the case of donation and suretyship it was considered that absence of any benefit by a minor was manifest and the contract was considered to be void *ab initio* or prohibition being absolute. In the case of a loan there was some doubt throwing the onus of proof on the minor to show that he received no benefit. Thus it appears that in every case except gift or suretyship the contract was in fact voidable and not void but as there was no word 110 for voidable the idea was expressed by using the word void with illustration showing that the contract could be made void at a future time at the option of the minor.

In the South African case of *Breytenback v Franke*⁽⁸⁾ (incidentally this was a case decided by a Bench of five Judges where all the Roman Dutch authorities were cited and considered). the case related to a lease of a minor's property granted by the father and natural guardian of the minor without obtaining the consent of the Court, but the law as to the effect of a deed by a minor himself was fully considered. It was observed in that case that a minor might ratify his own act or that of his guardian and it necessarily followed that the act itself could not be wholly and absolutely void as if it had never been done. The result of the case was to show that a dealing by a minor with his property was not *ipso jure* void but only voidable at his instance. In that case Lord de Villiers, J held that in all cases whether the act was void or voidable it was necessary for the minor to relieve himself by obtaining *restitutio-in-integrum*. Thus it 120

appears that the Roman Dutch Law is in accord with the general principle that a person cannot be a Judge in his own cause, and that when he wishes to get rid of the effect of his own act he must seek the assistance of the Court. 130

In the case of *Siman Naide v Aslin Nona*⁽⁹⁾ Soertsz, J took a similar view and it was held in that case that a sale of immovable property by a minor without the sanction of a competent Court is voidable and not void and the minor may relieve himself from the consequences of the contract by way of a regular action. In that case on page 339 Soertsz, J observed –

"It must also be regarded as settled law ever since *Silva v Mohamadu*⁽¹⁰⁾ which followed the well known South African case of *Breytenback v Frankel* (*supra*) that a sale of immovable property by a minor without the sanction of a competent Court is voidable and not void and that a minor may relieve himself or herself by *restitutio-in-integrum* or some equivalent legal proceeding." 140

In the instant case since the sale to the 7th and 8th defendants-respondents was by the 5th defendant-appellant himself it was necessary for him to seek the assistance of Court to set aside the deed of transfer executed by him while he was a minor by means of *restitutio-in-integrum* or some equivalent legal proceedings which the 5th defendant-appellant has failed to do up to date. Hence the only conclusion that one could arrive at is that the said two deeds 922 dated 2.12.81 and 926 dated 9.12.81 did convey the title of the 5th defendant-appellant in respect of the land dealt with by the said two deeds to the 7th and 8th defendants-respondents. 150

In the light of the above reasoning, I am inclined to take the view that the learned District Judge has come to a correct finding when he answered the issues in the affirmative and holding that the said two deeds did convey title of the 5th defendant to the 7th and 8th defendants. In the circumstances I see no reason to disturb the judgment of the learned District Judge. Accordingly the appeal of the 5th defendant-appellant is dismissed with costs. 160

DISSANAYAKE, J. - I agree.

Appeal dismissed.