

1969 Present: Srimane, J., and Samerawickrame, J.

T. D. GARLIS SINGHO, Appellant, and T. D. GEEGER SINGHO and  
others, Respondents

*S. C. 142/67 (Inty.)—D. C. Kalutara, 1046/P*

*Vendor and purchaser—Conditional transfer of property by co-owners—Subsequent re-transfer—Proportions to which the co-owners will be entitled then.*

Where property owned by co-owners is conveyed by them on a conditional transfer and is subsequently re-transferred to them without specifying any particular proportions, the deed of re-transfer will be construed to mean that the property was returned to them in the same proportions in which they held it at the time when they executed the conditional transfer.

<sup>1</sup> (1951) 52 N. L. R. at 562.

**A**PPEAL from an order of the District Court, Kalutara.

*Frederick W. Obeyesekere*, for the defendant-appellant.

*Upali de Z. Gunawardene*, with *Asoka de Z. Gunawardene*, for the respondents.

May 5, 1969. SIRIMANE, J.—

It is common ground that one Gettohamy inherited a half share of the rights of her husband Hendrick Appu, and that the balance half share passed to Hendrick Appu's seven children. The widow and the seven children on deed P2 of 1955, which is a conditional transfer, transferred their rights to one Meelis Singho. The property was redeemed, and the widow and the seven children bought back the property from Meelis Singho on deed P3 of 1957.

That deed P3 does not set out the proportions in which the property was re-transferred.

When the property which is conveyed on a conditional transfer is purchased back by the vendors, the deed in their favour must be construed to mean that the property was returned to them in the same proportions in which they hold it at the time they executed the conditional transfer; unless there is something in the deed of re-transfer which shows that the property was being returned in proportions different to those they were entitled to at the time of their conditional transfer.

Thereafter on deed P4 the widow and the children gave another conditional transfer to Thomas Perera and Richard Perera. On deed P5 of 1959, they once again redeemed the property. The property was sold back to the original vendors without specifying any particular proportions, and we think that the deed P5 should be construed to mean that the property was returned back to Gettohamy and her children in the same proportions to which they were entitled when they transferred it, on P4.

Thereafter, Gettohamy on deed P6 of 1959 transferred her *half share* to the first defendant who is one of her children. This is a clear indication, that there had been no change in the extent of the rights of herself and her children.

In deed P4 there was a condition that if any one or more of the vendors should redeem the property, the vendors on that deed (P4) were entitled to re-transfer the property only to those who actually made the payments. But, in this case, the retransfer was made to *all* the vendors and there is no indication that any one of them got more rights than they were originally entitled to.

We are of the view that on deed P5 Gettohamy got back the rights she was entitled to, viz., a half share of her husband's property, and the children were entitled to the balance half share in equal shares. The Interlocutory Decree should be amended on this basis. The first defendant-appellant is entitled to the costs of this appeal.

SAMERAWICKRAME, J.—I agree.

*Decree amended.*

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