

1903.

February 27
and
March 25.

PERERA v. DAVID APPU.

D. C., Kurunegala, 1,947.

Purchase of land—Conveyance to minors by the seller at the request of their father—Delivery of the deed to the father—Lease of the land by the father to a third party—Subsequent sale to plaintiff of part of the land by one of the vendees after arriving at majority—Validity of the minor's title as against their father's right to lease.

At the request of A, the father of B and C, minors, D conveyed a land to B and C and delivered the deed to A. He leased the land to E for a number of years. B, arriving at majority, sold his share of the land to F. In an action brought by F against E for ejection,—

Held, that as A, the father of B, had no authority from B or the Court to buy the land, the deed in his favour conveyed no title to him but operated as a conveyance to A himself, and that therefore A's lease to E was good.

THIS was an action for declaration of title in favour of the plaintiff for an undivided one-sixth share of an allotment of land which he alleged belonged to one David Perera by virtue of a deed of sale dated 26th February, 1886, and which the said Perera sold to the plaintiff on the 8th October, 1900.

The defendants pleaded that the land was purchased by one Sanchi Appuhami in the name of his two sons David Perera and Hendrik Appu, who were minors at the time of the execution of the conveyance in their favour; that for the maintenance of the said minor sons, Sanchi Appuhami leased to the second defendant and one Mohotti Appuhami the said land by deeds dated 2nd October, 1893, for a term of years; that the said Mohotti Appuhami assigned all his interest in the lease to the first defendant by deed dated 23rd March, 1897; and that the sale of the land to the plaintiff was subject to the lease above mentioned.

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The District Judge found as follows:—

“ At the request of Sanchi Appuhami, Sonuttara Unnanse executed a deed of sale in favour of Sanchi's minor sons David Perera and Abraham Perera (Hendrick Appu). The vendor delivered the deed to Sanochi, who thus became the *dominus* of the land, because he had no mandate from his sons to nominate them as his purchasers (2 N. L. R. 360). On 2nd October, 1903, Sanchi executed a deed of lease for ten years in favour of second defendant and Mohotti Appu. On 23rd March, 1897, Mohotti assigned his interest in the lease to the first defendant, David Appu. On 8th October, 1900, Sanchi's son David Perera executed a deed of sale for one-sixth of the garden in favour of plaintiff. Plaintiff complains that defendants had prevented him from entering into possession of the one-sixth.

“ I find that under lease and assignment the defendants are entitled to the possession of the land in question, and I decree that plaintiff's action be dismissed with costs.”

The plaintiff appealed. The case was heard in appeal on 27th February, 1903.

Sampayo, K.C., for the appellant.

Cur. adv. vult.

25th March, 1903. MONCREIFF, J.—

I think the District Judge was right in this case. By deed of the 26th February, 1886, Sanchi Appuhami bought a portion of land in the names of his two minor sons, David Perera and Hendrick Perera. On the 8th October, 1900, the minor David Perera being then of age sold an undivided one-sixth of the land to the plaintiff.

On the 2nd October, 1893, during the minority of his sons, Sanchi Appuhami granted a twelve years' lease of the land to two persons. The second defendant is one of those lessees; the first defendant is the assignee of the other lessee, and they maintain

1903. that David Perera sold the land to the plaintiff subject to their
 February 27 lease of 1893.
 and

March, 25. The issues were (1) whether Sanchi Appuhami had any right to
 grant the lease of 1893; (2) whether the land was transferred
 MONCRIEFF, subject to the lease; (3) to what damages the plaintiff was
 J. entitled.

I am not aware whether this Court has recognized leases of pre-
 mises belonging to minor children when made by parents—there
 being no guardian—for the purpose of preventing the waste and loss
 of the property. An opinion was expressed in *Perera v. Perera*
 (3 *Browne*, 150) that all leases by curators without the sanction of
 the Court are void. But that is not the case before us.

The land was bought in the names of the minors in 1886. Sanchi
 Appuhami is dead, and we do not know from what fund he paid
 the price. David Perera says that his grandmother paid the money.
 He was a child at the time and could hardly know, but I should
 imagine that the price was paid from money to which the minors
 were entitled. It is not suggested that the purchase was a dona-
 tion. Even a guardian could not invest the minor's money in the
 purchase of land without the leave of the Court; much less,
 surely, could a mere parent do so, and lease the land for so long
 a term as twelve years—an act which so far as I know was not
 necessary.

A lease for years by notarial deed is an alienation *pro*
tanto. According to *Vanderlinden* (3rd edition, 1897; p. 36)
 "the moneys collected (by the guardian) must be invested in
 Government securities paying interest; all other investments, as
 on mortgages, guarantees, and the like—however safe they may
 appear—require the previous sanction of the Court." Such an
 investment as this may not be necessarily void; but it would
 seem that Sanchi Appuhami was the purchaser of the property.
 He had, of course, no authority from the minors; he had not
 the powers of a guardian; he had not the sanction of the Court.
 And there is no injustice in the principle by which he who
 without any authority buys in the name of another and takes
 delivery is held to be the real purchaser. According to *Voet*
 (XVIII. tit. 1, 8): *Emerere possunt quilibet non prohibiti; quisque*
pro se, nemo pro alio, nisi procurator sit. Alioquin neque sibi
neque ei, pro quo sine mandato emit actionem acquirit; sed domi-
nus fiet is, cui ex his duobus rem venditor tradiderit.

This was accepted as good law by Withers, J., in *Rangahamy v.*
Bastian Vederala (2 *N. L. R.* 360); and I see no reason to question
 it. The person who transacts the purchase, with a total absence of
 authority to bind the pretended purchaser, and accepts the transfer,

becomes himself the purchaser. In this case, therefore, the minor David Perera had no title by the deed of 1886. The land was bought by his father Sanchi Appuhami, and the persons to whom it was leased were the lessees of Sanchi Appuhami.

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MONCREIFF,
J.

I think the appeal should be dismissed with costs.

LAYARD, C.J.—

I agree in thinking the appeal should be dismissed. On the authority of *Voet* (XVIII. tit. 1, §), which was followed by Withers, J., in *Ranghami v. Bastian Vederala* (2 N. L. R., p. 360), the purchase of Sanchi on behalf of the minors, because he had no mandate from them to nominate them as purchasers, operates as a transfer to Sanchi, and the plaintiff has no title to the undivided one-sixth of the land which remains subject to the lease.
