

1958 Present : Basnayake, C.J., and Pulle, J.

PODIHAMY, Appellant, and JAN SINGHO, Respondent

S.C. 398—D.C. Gampaha, 147/G & C

Minor—Sale of immovable property belonging to him—Sanction of Court—Court cannot compel sale—Civil Procedure Code, ss. 331, 332.

When a Court gives permission to the guardian of a minor to sell immovable property belonging to the minor, it cannot make an order to the effect that if the guardian fails to execute the transfer of the property the Secretary of the Court should execute it. The fact that the guardian, having completed negotiations to sell the minor's property, obtains the authority of the Court gives the Court no authority to compel the guardian to sell, any more than it has authority to compel the purchaser to buy.

APPPEAL from an order of the District Court, Gampaha.

C. D. S. Siriwardene, for 3rd Respondent-Appellant.

N. E. Weerasooria, Q.C., with *Carl Jayasinghe* and *S. D. Jayasundera* for Purchaser-Respondent.

Our. adv. vult.

December 12, 1958. BASNAYAKE, C.J.—

This is an appeal by the mother of two minor children who is also their guardian *ad litem* in the proceedings in which this appeal is preferred. The appellant and her husband, the petitioner-respondent, gifted to their two minor children by deed No. 39883 of 26th March 1954 a land known as Ambagahalanda in extent 17 acres 2 roods and 24 perches. This gift was subject to the life interest of the donors and a mortgage in favour of Olive Sylvia de Alwis Seneviratne of Thalgasmote, Veyangoda. The life interest of the donors was first leased and later sold by deed No. 4868 of 30th July 1955.

On 21st December 1955 the father of the minor applied to the District Court for authority to sell the land by private treaty and pay off the principal and interest due on the mortgage and deposit the balance of the proceeds of sale in Court. The minor children were named as respondents and their mother was appointed guardian *ad litem* and their father curator. The Court granted permission to sell the land for Rs. 30,000/- to one U. P. Jan Singho (hereinafter referred to as the purchaser), who was willing to buy the land for Rs. 30,005/- and take upon himself all burdens and liabilities in respect of the land upon payment to him of a sum of Rs. 15,000/- for the payment of certain liabilities in respect of the land specified by him.

On 16th March 1956 the learned District Judge made the following order:—

“ Issue deposit order in favour of U. P. Jan Singho to deposit in court the sum of Rs. 15,005/- for the credit of the minors the 2nd & 3rd respondents, by 27/3. Petitioner to execute a transfer of the land described in the schedule to the petition subject to all mortgages, leases & encumbrances of whatsoever nature & kind on or before 20/4. If petitioner does not do so after moneys are deposited then the Secretary of this Court is authorised to sign the transfer.”

On 19th March 1956 the sum of Rs. 15,005/- was deposited in the Kacheheri and on 20th March 1956 the receipt was produced in Court.

On 2nd May 1956 the purchaser moved the Court for an order on the Secretary of the District Court to execute the deed of transfer, and the Secretary was directed to do so and a transfer was accordingly executed.

On 6th April 1957 the mother of the minors applied through her proctor to have the order directing the Secretary to execute the deed of transfer set aside. The learned Judge after hearing counsel on behalf of the parties refused the application. This appeal is from that order.

Now in the instant case the minors were the owners of the land in question by virtue of the gift they had received from their parents. A sale of immovable property of which they are owners either by them or by their guardian without the authority of the District Court does not bind them (*Mustapha Lebbe v. Martinus*¹, *Girigorishamy v. Lebbe Marikar*² (three Judges)).

The question that arises for decision in this case is whether a guardian who seeks the authority of the Court to sell immovable property belonging to a minor is bound to sell once the authority is granted. I am of opinion that a guardian like any other vendor of immovable property cannot be compelled to sell a minor's immovable property merely because he has negotiated a sale of it. The fact that the guardian having completed negotiations to sell a minor's immovable property obtains the authority of the Court, gives the Court no authority to compel him to sell any more than it has authority to compel the purchaser to buy.

The Court was wrong in making the order to the effect that if the guardian of the minors, their father, failed to execute the transfer the Secretary should execute it. There is no provision of the Civil Procedure Code which authorises a Judge to make such an order. The only section of the Code which authorises a Court or an officer appointed in that behalf to execute a conveyance is section 332. That section does not apply to an application by a guardian for authority to sell immovable property belonging to a minor. It applies only to a case where a decree commanding a person to grant, convey, or otherwise pass from himself any right to, or interest in, any property as provided in section 217(D) of the Code has been entered and the judgment-debtor neglects or refuses to comply with such decree (s. 331).

¹ (1903) 6 N. L. R. 364.

² (1928) 30 N. L. R. 209.

In the instant case the learned Judge does not purport to act under sections 331 and 332 nor has there been even an attempt to adopt the procedure prescribed in those sections. The former section provides that if the decree is for the execution of a conveyance and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance and apply to the Court by petition to have the draft served on the judgment-debtor. And in terms of the latter section the Court is required thereupon to cause the draft and a copy of the petition to be served on the judgment-debtor through the Fiscal together with a notice in writing stating that his objections, if any, thereto should be made within the time fixed by the Court in that behalf and will be considered and determined on a date to be named in the notice. The decree-holder is also required to tender a duplicate of the draft to the Court for execution, supplying a stamp of the proper amount if a stamp is required by law: It is only on proof of such service that the Court or such officer as it appoints in that behalf is empowered on the appointed day, if no objections are made, to proceed to execute the duplicate so tendered.

It is not necessary to discuss the cases cited by learned Counsel for the parties to this appeal as the law applicable has been examined with reference to the Roman Dutch Law writers and the previous decisions of this Court in the two cases cited above.

The appeal of the appellant is allowed with costs both here and below, and the order of the learned District Judge authorising the Secretary of the District Court to execute a conveyance on behalf of the minors is set aside.

PULLE, J.—I agree.

Appeal allowed.
