

[FULL BENCH.]

Present: Wood Renton C.J. and Shaw and De Sampayo JJ

WASS *v.* SAMARANAYAKE.

413—D. C. Chilaw, 5,057.

Ratification—Person executing a conveyance in his own name—Ratification of conveyance by a third party—Chetty traders—Fiscal's conveyance in favour of one partner—Rights of other partners.

One Supramaniam Chetty, who was a partner of a firm of Chetty traders, sued on a mortgage bond and obtained a decree in his name in March, 1900. In October, 1900, Supramaniam Chetty assigned to his co-partners all his share in the partnership assets, and granted to them jointly and severally a power of attorney to enable them to recover or deal with his separate share. In 1901 Supramaniam bought the land under the decree.

In 1907 Murugappa Chetty (one of Supramaniam's partners) conveyed the land to plaintiff.

In February, 1914, Fiscal's transfer was granted to Supramaniam Chetty.

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On November 17, 1914, Supramaniam Chetty ratified the conveyance to plaintiff by Murugappa Chetty.

Plaintiff instituted this action for declaration of title in June, 1914.

Held, that plaintiff had no title at the date of action.

Held further, that no ratification was possible in this case, as the conveyance from Murugappa Chetty did not purport to be on behalf of Supramaniam Chetty.

"A contract cannot be ratified by a third party, so as to enable him to sue or make him liable to be sued on it where the person who made the contract did not profess at the time of making it to be acting on behalf of a principal."

THE facts are fully set out in the judgment.

A. St. V. Jayewardene, for second defendant, appellant.

Bawa, K.C., and *Sansoni*, for plaintiff, respondent.

Cur. adv. vult.

January 27, 1916. WOOD RENTON C.J.—

This case was referred by my brothers Shaw and De Sampayo to a Bench of three Judges for the determination of a question as to the effect on their respective titles of an omission on the part of two mortgagees to supply addresses for service to the Registrar of Lands, in accordance with the requirements of sections 642 *et seq.* of the Civil Procedure Code. The decision of that question has, however, become unnecessary in this appeal, as it seems clear that the title of the plaintiff-respondent to bring the action fails on another ground.

The action is one for declaration of title to a land originally belonging to Elaris Samaranayake, the husband of the first defendant, Marihamy. They were married in community, and on August 11, 1893, made a joint will, of which the survivor was appointed executor or executrix. Don Elaris died on August 31 in the same year. By mortgage bond No. 2,116 dated August 27, 1895, Marihamy, as executrix of her husband, borrowed from Sidambaram and Letchiman Chetties, traders at Madampe, a sum of Rs. 1,100 in order to pay debts due by the estate, and hypothecated the land in dispute as security. The mortgagees put the bond in suit on November 3, 1899. Summons issued on December 15, 1899. Decree was obtained on June 1, 1900. On February 27, 1904, it was assigned to D. J. Amaresekera. The Fiscal's sale under the decree was held on February 28, 1905. On October 7, 1908, Amaresekera obtained his Fiscal's conveyance, and on November 9, 1912, he transferred the property to the second defendant, the appellant, Marihamy's son. In the meanwhile a collateral series of dealings with the land, also initiated by Marihamy, had been in progress. On March 7, 1899, she executed—again for the payment of debts

of the estate, although without express reference to her powers as executrix—a secondary mortgage of the property in favour of Supramaniam Chetty and his three partners, Karuppan, Arunasalam, and Murugappa Chetties. Supramaniam Chetty put the bond in suit on December 21, 1899, and obtained decree on March 22, 1900. The Fiscal's sale was held on January 8, 1901, but no Fiscal's transfer was at that stage taken out. On October 7, 1900, Supramaniam Chetty assigned for valuable consideration his entire interest in the firm to his remaining partners, constituting each of them his attorney for the purpose of effectuating the transfer. On December 16, 1913, and again on April 27, 1914, Murugappa Chetty, by Ramen Chetty, who held a power of attorney from him dated April 4, 1907, conveyed the land to the plaintiff. These deeds were ratified by a conveyance dated November 20, 1914, from Supramaniam Chetty himself, who had taken out a Fiscal's transfer on February 6, 1914.

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At the date of the successive conveyances by Murugappa Chetty to the plaintiff no Fiscal's transfer had been obtained, and therefore Murugappa Chetty had no title to convey. The plaintiff's counsel, however, strongly relied on Supramaniam Chetty's deed of ratification. It is clear that Supramaniam Chetty could not ratify Murugappa Chetty's conveyances unless Murugappa Chetty at the date, and in the matter, of those conveyances was acting as Supramaniam Chetty's agent. The plaintiff's counsel contended that Supramaniam Chetty's deed of October 7, 1900, merely put his remaining partners in the first instance in a position to enforce the decree against Marihamy as his agents, and that the property bound by that decree would not become theirs till it had actually been recovered. In his conveyances to the plaintiff Murugappa Chetty was therefore only purporting to pass Supramaniam Chetty's title.

In my opinion the deeds in question will not bear that construction. In his deed of October 7, 1900, Supramaniam Chetty, for valuable consideration, divested himself of all further interest in the property of the firm. The language of the deed clearly shows that his sole object in constituting his three partners to be his attorneys was to enable them to recover whatever portions of that property might be outstanding "for their own absolute use and benefit," and Murugappa Chetty in his subsequent deed is as clearly purporting to act as principal. On these grounds I agree with my brothers that the plaintiff's action fails, and I concur with the order that they have proposed.

SHAW J.—

The plaintiff, who is the respondent in this appeal, sued for declaration of title to certain land called Madangahawatta, claiming title as transferee of the right acquired by one Supramaniam Chetty under a Fiscal's transfer dated February 6, 1914.

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The second defendant claimed to be entitled to the same land, founding his title on a Fiscal's transfer obtained by one Juan Amaresekera dated October 7, 1908.

The District Judge has found in favour of the plaintiff, and declared him to be entitled to the land; and from his decision the present appeal is brought.

The issue raise several interesting questions of law and fact, the majority of which it is unnecessary to deal with, because the first objection taken to the plaintiff's cause of action appears to me to be fatal to it.

The plaintiff's alleged title is as follows:—On March 7, 1899, one Marihamy, who was the widow and executrix of H. E. Samaranayake, the owner of the land in dispute, mortgaged it to one S. K. R. Supramaniam Chetty as security for a sum of money borrowed from a firm of Chetties, of which Supramaniam was a member.

On December 21, 1899, Supramaniam Chetty instituted a suit on the mortgage bond and obtain a decree on March 22, 1900.

On October 7, 1900, Supramaniam Chetty assigned to his co-partners all his share in the partnership assets, and granted to them jointly and severally a power of attorney to enable them to recover or deal with his separate share.

On January 8, 1901, the Fiscal sold the land under the mortgage decree, and it was bought by the plaintiff in the mortgage suit, Supramaniam Chetty.

On April 4, 1907, Murugappa Chetty, one of Supramaniam Chetty's partners, granted a general power of attorney to K. P. Ramen Chetty, and on December 16, 1913, Ramen Chetty as such attorney conveyed the land in dispute to the plaintiff in this suit.

On February 6, 1914, the Fiscal's transfer to effectuate the sale of January 8, 1901, was granted to Supramaniam Chetty, and on April 27, 1914, Ramen Chetty, as attorney of Murugappa Chetty, again conveyed the land to the plaintiff.

On June 26, 1914, the plaintiff instituted the present suit claiming title to the land.

The second defendant having put in an answer challenging the right of Murugappa Chetty or his attorney Ramen Chetty to convey, Supramaniam Chetty, on November 17, 1914, executed a power of attorney to one Vellayapillai, for the purpose of authorizing him to ratify the conveyance of the land by Ramen Chetty as Murugappa's attorney to the plaintiff, and on November 25, 1914, Vellayapillai accordingly as such attorney by deed purported to ratify the said conveyance.

I am clearly of opinion that at the time the plaintiff brought this action he had no legal title to the land. According to his own showing the title was in Supramaniam Chetty. The decree on which the sale took place was a personal judgment in favour of

Supramaniam, and not one of his firm (see *Somasunderam Chetty v. Arunasalem Chetty*¹), and the sale and the Fiscal's transfer under the decree were to Supramaniam Chetty personally, and the legal title was in him, whatever equitable rights his partners may have had against him in respect of the transaction. The transfer, therefore, by him of October 7, 1900, to his partners of his interest in the firm property conveyed no legal title to this land, even if he could himself be said to have had any at the time, he not having obtained a transfer from the Fiscal. This being so, neither Murugappa or his attorney Ramen could convey title to the plaintiff.

It was then argued that the ratification after action brought by Supramaniam, through his attorney Vellayapillai, of the conveyance from Murugappa conferred title on the plaintiff, and related back to the date of the conveyance, and the case of *Mohamado Tamby v. Kiduru Mohamado*² was cited in support of the contention.

But although there may, as is shown by that case, under some circumstances, be a ratification after action brought which will relate back and give a good title to the plaintiff at the time of bringing the action, that will not assist the plaintiff in the present case, because no legal ratification by Supramaniam Chetty was possible.

The conveyance by Murugappa, through his attorney Ramen, did not purport to be on behalf of Supramaniam or any other principal, but purported to be a conveyance by the vendor Murugappa personally, and it is clear that a contract cannot be ratified by a third party, so as to enable him to sue or make him liable to be sued on it where the person who made the contract did not profess at the time of making it to be acting on behalf of a principal. *Keighley Maxstead & Co. v. Durant*.³ The Doctrine of ratification, as stated by Tindal C.J. in *Wilson v. Tumman*⁴ and cited with approval in the last-mentioned case, is as follows:—"An act done for another, by a person, not assuming to act for himself, but for such other person, though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him".

The conveyance in the present case not being on behalf of Supramaniam Chetty cannot be ratified by him. The plaintiff, therefore, shows no legal title to the land in dispute.

I would allow the appeal, with costs.

DE SAMPAYO J.—

The land Madangahawatta in claim belonged to Elaris Samaranayake. He died on August 31, 1893, having made his last wil dated

¹ (1914) 17 N. L. R. 257.

² 9 S. C. C. 114.

³ (1901) A. C. 240.

⁴ 6 M. & G. 342.

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August 11, 1893, by which he appointed his wife, the first defendant, as executrix. The first defendant, as such executrix, by bond dated August 27, 1895, and registered on September 6, 1895, mortgaged the said land to Sidambaram Chetty. She also by bond dated March 7, 1899, and registered April 17, 1899, mortgaged the same land to Supramaniam Chetty. This latter bond appears from its terms to be, and may for the purpose of this appeal be, regarded as having been granted by the first defendant in her representative capacity and as being a secondary mortgage. On November 3, 1899, Sidambaram Chetty sued the first defendant on his primary mortgage in the action No. 2,028 of the District Court of Chilaw, and obtained a decree, which he by deed No. 23,754 dated February 27, 1904, assigned to one Juan Amarasekera. The latter substituted himself as plaintiff on the record and issued writ of execution, and had the land sold on February 28, 1905, and purchased it himself. Having obtained a Fiscal's transfer dated October 7, 1908, and registered on February 24, 1912, he sold the land to the second defendant by deed dated November 9, 1912, and registered on December 3, 1912.

The plaintiff claims the land against the second defendant under the following circumstances, and sues both the defendants in ejectment. Supramaniam Chetty put his secondary mortgage bond in suit against the first defendant in the action No. 3,608 of the District Court of Negombo on December 21, 1899, and under the decree entered therein the land was sold on August 8, 1901, and was purchased by himself. No Fiscal's transfer was, however, issued in his favour till February 6, 1914. It appears that Supramaniam Chetty belonged to a firm of Chetty traders, and had invested the money of the firm in the bond granted to him by the first defendant, and on his retirement from the firm he by deed dated October 7, 1900, assigned all his interest in the property of the firm to his co-partners. There was no specific assignment of the claim or decree in D. C. Negombo, No. 3,608, but on December 16, 1913, by which date the land had, as above stated, been sold under writ and purchased by Supramaniam Chetty himself, one Murugappa Chetty, who was the only member of the firm then in Ceylon, considering himself entitled to the land as purchaser, purported to sell it to the plaintiff. Then, after the Fiscal's transfer had been issued, Murugappa Chetty, by deed dated April 27, 1914, confirmed his own sale to the plaintiff. But it was apparently soon perceived that as the Fiscal's transfer had been made out in the name of Supramaniam Chetty any confirmation of the sale should proceed from him, and not from Murugappa Chetty, and accordingly Supramaniam Chetty, by deed dated November 20, 1914, ratified Murugappa's deed of sale and further assured the land to the plaintiff. I may add that, in view of the law as to the effect of a conveyance to one member of a Chetty firm with the initials of the firm prefixed (see *Somasunderam*

*Chetty v. Arunasalem Chetty*¹), Murugappa Chetty could not depend for his title directly upon the Fiscal's transfer in favour of Supramaniam Chetty. 1916.
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At the argument of the appeal the question principally discussed was as to the effect of the sales under the two mortgage decrees, neither of the mortgagees having registered an address or having been made party to the other's action, and in view of the decisions in *Sebastian Perera v. Jusey Perera*² and *Elyatamby v. Valliamma*³ it was thought desirable to refer the case to a Bench of three Judges. But at the argument before the Full Bench it became unnecessary to go into the above question, for it appeared clear that at the date of the action the plaintiff had no title, as he could not depend on the ratification executed by Supramaniam Chetty. I agree with the rest of the Court on that point, and I need only deal with the issue of fraud which the plaintiff raised as affecting the defendant's title.

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It appears that Juan Amaresekera is son-in-law of the first defendant and brother-in-law of the second defendant. Sidambaram Chetty, in addition to his claim on the mortgage decree in action No. 2,038, had three other mortgage decrees against the first defendant, obtained by him in actions Nos. 2,029, 2,031, and 2,035. Though the total amount due on all the decrees was Rs. 8,300, Sidambaram Chetty appears to have agreed to accept a sum of Rs. 4,000 in full settlement. The first defendant, in order to raise money for the payment of this amount, sold certain lands for Rs. 2,000 to Juan Amaresekera, who undertook to pay the same to Sidambaram Chetty. Juan Amaresekera paid that sum to Sidambaram Chetty on February 27, 1904, and obtained a full discharge in favour of the first defendant in respect of the claims in actions Nos. 2,029 and 2,031, but on the same day, as above stated, he obtained an assignment of the decrees in actions Nos. 2,028 and 2,035 in consideration of a further sum of Rs. 2,000. The plea of fraud is founded on the allegation that the first defendant had intended to pay off all the debts due to Sidambaram Chetty, in which case Supramaniam Chetty's mortgage on the land in question would have been more secure, that with that view she furnished the further sum of Rs. 2,000 to be paid to Sidambaram Chetty, but that by collusion among the parties concerned Juan Amaresekera, instead of obtaining a discharge of the decree in actions Nos. 2,028 and 2,031, procured an assignment of them. The District Judge has sustained this plea, and has held that the assignment was "null and void as against the plaintiff". I cannot see how the facts above stated amount to fraud, and much less how Supramaniam Chetty or those claiming under him can be said to be affected by it. Even if the first defendant had intended

¹ (1914) 17 N. L. R. 257.

² (1910) 14 N. L. R. 20.

³ (1913) 16 N. L. R. 210.

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to pay off the mortgage in favour of Sidambaram Chetty, there was nothing to prevent her from changing her mind and allowing Juan Samaresekera to take an assignment. Supramaniam Chetty was not a party to the arrangement, nor, so far as the evidence discloses, was he even aware of it. The first defendant was under no obligation to get Sidambaram Chetty's mortgage out of the way and thus improve Supramaniam Chetty's security by the assignment of the decree in action No. 2,028 to Juan Amaresekera, Supramaniam Chetty was in no worse position than he had been before. In my opinion there is no ground for holding that there was any fraud in the legal sense, whereby the second defendant's title can be said to be vitiated in competition with that of the plaintiff.

I think the judgment appealed against is erroneous, and this appeal is entitled to succeed. I would set aside the decree of the District Judge and dismiss the plaintiff's action, with costs in both Courts.

Appeal allowed.

