KARUNADASA RAJAPAKSA
V.
PODIAPPUHAMY

COURT OF APPEAL
P. R. P. PERERA, J. AND PALAKIDNAR, J.
C. A. NO. 393/79 (F)
D. C. RATNAPURA NO. 1648/L
OCTOBER 20, 21, 26, 1988.

Vindicatory suit — Gemming rights — Interim Injunction — Absence of title to land — Adoption in Kandyan Law — Succession to adoptive parents' property — Guardian's right to deal with minor's property — Ratification by minor after attaining majority.

One Mudalihamy to whom both plaintiff and defendant traced their title left one child Dingiri Mahattaya and two adopted (as alleged) children Lamahamy and Rambandahamy who were children of Mudalihamy's wife by another marriage. After Mudalihamy died Dingiri Mahattaya, Lamahamy and Rambandahamy divided the lands of Mudalihamy equally among themselves by a deed. As Dingiri Mahattaya was a minor his mother Lamaethana (who was also the mother of Lamahamy and Rambandahamy) signed the deed on his behalf.

Held

(1) No oral declaration whether public or not, whether made on a formal occasion or otherwise is necessary for adoption under Kandyan Law. All that is needed is reliable, clear and unmistakable evidence in whatever form of the deceased's intention to adopt the child as his heir. On the evidence, Lamahamy and Rambandahamy were adopted children of Mudalihamy and entitled to succeed to his interests.

(2) Lamaetana did not have the capacity as guardian to deal with the property of her minor son Dingiri Mahattaya. The alienation is prima facie void but it can be ratified either expressly or impliedly, as was done in the case, by the minor on his attaining majority.

(3) As the plaintiff was rightly held by the District Judge to hold no property or gemming rights on the land he was not entitled to an injunction and his action had to be dismissed.

Cases Referred to

1. *Dayanganie v. Somawathie* — (1956) 58 NLR 337
(Note by Editor — *Tikiri Banda v. Loku Banda* (1905) 2 2 Bal. R. 144 and *Tikiri Kumarihamy v. Punchi Banda* — (1901) 2 Browne's Reports 299 were not followed in *Dayanganie v. Somawathie)*

2. *Perera v. Tissera* — 35 NLR 264

3. *Fernando v. Fernando* — 19 NLR 193, 194, 195.

APPEAL from Judgment of District Court of Ratnapura.

R. K. W. Goonesekere for Plaintiff-Appellant.
L. C. Seneviratne P. C. with *Lakshman Perera* for Defendant-Respondent.

Cur. adv. vult.

January 31, 1989
P. R. P. PERERA, J.

The plaintiff filed the present action seeking a declaration of title to 1/12 + 11/420 shares of the gemming rights in the land called Goda Ovita, more fully described in the schedule to the Plaint. It was the plaintiff's case, that one Mallika-Arachilage Mudalihamy who was entitled to a 1/4 th share of this land left as his sole heir one Dingiri Mahattaya — who on deed No. 15121 of 1929, (P3), conveyed the gemming rights in 11/60 shares to one Loku Appuhamy — from whom the plaintiff as heir succeeded to 11/420 shares.

The plaintiff also averred that one Ganegamaethige Menikethana who was entitled to 1/12 share of this land by deed No. 30368 of 1899 ('P5') conveyed her rights to

Ganegamaethige Punchiappuhamy alias Appuhamy who was himself entitled to a 1/24th share. Appuhamy, by deed No. 30369 of 1899 ('P6'), conveyed the gemming rights in a 1/12th share to one Thomas Perera, on whose death his widow Justina Hamy alias Punchimenike, and the children — Anselm Perera and Peduru Perera acquired those rights. Anselm Perera died intestate and issueless and upon the said Justinahamy's death, the only surviving son Peduru Perera, became entitled to the entirety of Thomas Perera's interests. Thereafter on the death of Peduru Perera, his daughters Cicilin Nona and Podimenika acquired the said 1/12th share, and both of them by deed No. 51637, (P12) conveyed such 1/12th share to the plaintiff. The plaintiff accordingly became entitled to the gemming rights in 11/420 shares + 1/12 shares.

It was the plaintiff's complaint that the defendant was carrying on gemming operations on this land in defiance of the plaintiff's rights and thus sought an interim injunction, restraining the defendant from carrying on gemming operations on the said land.

The defendant filed answer stating that Mallikarachilage Mudalihamy was entitled to 1/5th share of this land, and that his interests devolved on three children, one of whom was Dingiri Mahattaya, — referred to in the Plaint, who became entitled only to a 1/15th share of the land in suit and that this share had been dealt with in 1910, on deed No. 1951, ('V14'), prior to the purchase of 11/60 share of the mineral rights by the plaintiff's father Loku Appuhamy.

It was also the defendant's case that Ganagamaethige Punchi-Appuhamy alias Appuhamy had prior to the transfer of his gemming rights to the plaintiff's predecessor on deed 'P 6', already dealt with that share, on deed No. 9010 of 18th July 1893, (V 31), and that therefore the plaintiff derived no title whatsoever. The defendant thus sought a dismissal of this action as the plaintiff had no title to the land, which was the subject matter of this suit.

According to the defendant whatever title, some of the alleged predecessors of the plaintiff had, such title was exhausted as

they had disposed of the same previously. The defendant therefore, contended that the plaintiff does not have the title which would entitle him to succeed in obtaining any of the reliefs he has sought in the present action. The defendant also in his answer, set out a devolution of title, which if correct, would necessarily defeat the claim of the plaintiff.

After several dates of trial, the learned Trial Judge, reserved his order, and delivered judgment on 19.12.79, dismissing the plaintiff's action with costs and directed that decree be entered accordingly. It is against this judgment and decree that the plaintiff has filed the present appeal.

The first matter that arises for determination in this case is whether Mallika Arachilage Mudalihamy's share devolved on his only child Dingiri Mahattaya, as claimed by the plaintiff or, on Dingiri Mahattaya, Lamahamy and Rambandahamy, as alleged by the defendant. Lamahamy and Rambandahamy are admittedly the children of Lamaethana by another bed, while Dingiri—Mahattaya was the only child of Mudalihamy and Lamaethana. It is common ground that Mudalihamy was married to Lamaethana, who at the time of marriage had two children Lamahamy and Rambandahamy by an earlier husband.

According to the plaintiff therefore on the death of Mudalihamy, the entirety of his interests devolved solely on Dingiri Mahattaya — his own child. The defendant alleged however that after Mudalihamy's death his interests devolved on Dingiri Mahattaya his child and his two adopted children Lamahamy and Rambandahamy. It is in evidence that the widow Lamaethana and the aforesaid three children Dingiri Mahattaya, Lamahamy and Rambandahamy entered into a deed of settlement 'V 13', whereby the said children agreed to divide the lands of Mudalihamy equally among the three of them. At the time 'V13' was executed, Dingiri Mahattaya was a minor, and his mother Lamaethana signed the deed on his behalf.

It was the submission of Counsel for the plaintiff-appellant that deed 'V13' was clearly a deed executed against the interests of the minor Dingiri Mahattaya. Hence, his mother Lamaethana

who was also the mother of the other two children Lamahamy and Rambandahamy, could not by signing this deed give validity or effect to 'V 13'. Counsel contended strongly therefore, that 'V13' cannot possibly be accepted as a deed conferring rights on Lamahamy and Rambandahamy.

Counsel submitted further that there was no material to support an adoption of Lamahamy and Rambandahamy. In the absence of evidence of such adoption Counsel contended, that the entirety of Mudalihamy's interest necessarily devolved on his son Dingiri Mahattaya. Counsel urged, that under Kandyan Law, an adopted child does not become entitled to succeed to the property of the adoptive parent, unless there has been a public declaration by the adoptive parent on a formal occasion that the particular child was adopted for the purpose of inheriting his estate. It was Counsel's submission that there is no evidence whatsoever in this case to show, that there was such a public declaration, and in the absence of such evidence, there could not be an adoption valid in law.

It would be relevant in this context to consider the contents of documents 'V13'. This document reveals the following important facts.

(a) that Mallika Arachilage Mudalihamy died on 01.02.1897;

(b) that heirs of Mudalihamy were Lamahamy, Rambandahamy and Dingiri Mahattaya.

(c) Lamaethana — the mother of Dingiri Mahattaya, who was a minor at that stage, signed 'V13' on his behalf.

(d) there were disputes among the heirs, as Mudalihamy had died intestate, and this deed 'V13', was written as a settlement of these disputes, whereby the parties agreed to share and possess the inheritance of Mudalihamy equally.

(e) Mudalihamy owned 1/5th share, of Goda Ovita, which is the land in suit;

(f) one of the witnesses to ('V13'), was Mallikaarachilage Appuhamy of Karanagoda — a brother of Mudalihamy, according to the plaintiff, and was, entitled to 1/5th share of this land according to the devolution set out by the defendant.

This deed of settlement therefore bears out that Dingiri Mahattaya's mother Lamaethana, accepted the rights of Lamahamy and Ranbandahamy — the adopted children of Mudalihamy on behalf of Dingiri Mahattaya, and that Mallikarachilage Appuhamy — a brother of Mudalihamy, has also accepted this position by signing this document as a witness. According to 'V13' it is also clear that this document is only a formal recording of a settlement of disputes among the heirs of Mudalihamy on whom the property had already devolved by operation of law. It is also significant that while Mudalihamy died on 01.02.1897, the deed 'V13' was executed on the 10 March of the same year.

It was the submission of Counsel for the defendant respondent however that the validity of the adoption of Lamahamy and Rambandahamy by Mudalihamy was not in issue at the trial, and stated that no issue has been raised on this particular matter in the District Court. In any event, having regard to the totality of the evidence, in this case, I am unable to agree with the contention of Counsel for the appellant that under Kandyan Law, an adopted child does not become entitled to succeed to the property of the adoptive parent unless there has been a public declaration by the adoptive parent on a formal occasion that the particular child was adopted for the purpose of inheriting his estate. I find suport for this view in the judgment of Basnayake C. J. in *Dayanganie vs. Somawathie* (1), where it has been held that no oral declaration whether public or not, or on a formal occasion or otherwise is necessary, and all that is needed is reliable, clear and unmistakable evidence in whatever form of the deceased's intention to adopt the child as his heir. This argument of Counsel therefore in my view must fail. I therefore hold that both Lamahamy and Rambandahamy were entitled to succeed to the interests of Mudalihamy on the evidence in this case.

Yet another matter that was urged by Counsel for the appellant was that in any event Lamaethana did not have the capacity as guardian to deal with the property of Dingiri Mahattaya who was a minor at that time. Counsel for the defendant respondent however contended that this was not a relevant matter, and did not arise for consideration in this case, as on the evidence it was abundantly clear, that Dingiri Mahattaya had in no uncertain terms ratified the document 'V 13', after he attained majority.

On this matter, it was Mr. R. K. W. Goonesekera's contention that where a contract relating to immovable property is made by a minor without the sanction of a competent Court with the assistance of a guardian or by a guardian on behalf of a minor without such sanction the contract itself should be treated as being prima facie void as against such minor. Counsel urged that such a contract which is void could not be validated by ratification after majority unlike a contract which was merely voidable.

Professor T. Nadarajah, however, in a very comprehensive article entitled "THE CONTRACTS OF MINORS IN THE MODERN ROMAN-DUTCH LAW" (University of Ceylon Review Vol. 11, page 65 at page 95), has expressed a contrary view which is reproduced below:

> "Where a contract entered into by a minor with or without the assistance of a guardian or by a guardian on behalf of a minor has been executed by the alienation of immovable property of the minor without the sanction of a Court, the alienation is prima facie void, as against the minor, and the guardian before majority or the minor during or after a minority is entitled to vindicate the property. But the alienation is not strictly devoid of legal effect in as much as it is not open to the alienee to assert that the alienation was invalid, as the alienation is capable of being made binding on the minor by being ratified either expressly or impliedly by him on his attaining majority, and as the alienation will be held to be valid even as against the minor where the alienee has been misled, "by the minor expressly or impliedly representing himself to be of full age."

"Although where an alienation is prima facie void, as against a minor there is strictly no need to apply to a Court for a declaration that the alienation is void, yet since the minor may be held to have impliedly ratified, the prima facie void alienation by allowing a certain period of time to elapse after majority without asserting his rights, it is safer in all cases, whether the alienation is prima facie void or prima facie valid, to make an application to Court for relief from the consequences of the alienation."

This statement of the law by Professor Nadarajah, is in my view very much in accord with the law on this matter, as it presently stands. This view, has also been adopted by the Supreme Court in *Perera vs. Tissera* (2) and *Fernando vs. Fernando* (3). I am therefore of the opinion that there is no merit in the submission of learned Counsel that a minor cannot ratify a contract which is prima facie void after he attains majority.

Dingiri Mahattaya therefore if he did not agree with the settlement set out in deed 'V13' could well have rejected it after he attained majority. On the evidence adduced in this case, it is clear that he had not sought to do so, but on the contrary, has indeed ratified it by his subsequent conduct. In fact, Dingiri Mahattaya has conveyed a 1/3rd of 1/5th—i.e. 1/15th share in 1910 on deed 'V14'. Further, two very old documents 'V15' and 'V 16', tend to support the contention that Dingiri Mahattaya accepted and ratified the agreement 'V 13' by his deed 'V 14'.

The learned District Judge having considered the evidence in this case has come to a finding that Dingiri Mahattaya was only entitled to 1/15 share of this land and that he conveyed all his interests by 'V14' in 1910. In the result, Dingiri Mahattaya had no interest which could have been conveyed to the plaintiff's father Loku Appuhamy on 'P3' in 1929. The learned District Judge has therefore in my view rightly held that the plaintiff's claim to a 11/420 shares by paternal inheritance must fail. We see no reason to disturb this finding of the learned Trial Judge.

The next question that arises for determination relates to the 1/2 share the plaintiff claims from Ganegamaethige Punchi Appuhamy alias Appuhamy. According to the pedigree relied on

by both parties, it is common ground that the Mallikarachige people, of whom Mudalihamy (Dingiri Mahattaya's father) was one, were entitled to one half share of the land in suit. The present claim is therefore made from and out of the balance half share of the land not owned by the Mallikarachige people.

In respect of this half share the defendants have filed a pedigree showing a 1/12th share to G. A. Appuhamy alias Punchi Appuhamy, 1/6th share to Kaluethana, a 1/12th share to G. A. Appuhamy, 1/12th share to G. Vasthuhamy, and 1/12th share to one Gunawardena. The plaintiff has not challenged the shares given by the defendant to Kaluethana, Vasthuhamy and Gunawardena. According to the plaintiff the deed marked 'V 31' reveals that the vendor on this deed was one Ganegamethiralalage Appuhamy Vel Vidane, while the vendor on 'V37' was Ganegamaeithige Punchiappuhamy. It was the plaintiff's case that the vendor on 'V31' and 'V37' are one and the same person. On this aspect of the matter Counsel for the plaintiff appellant, submitted that according to the deed 'P5', G. G. Punchiappuhamy (the vendor on 'V31' of 18.07.1892) was entitled to a 1/24th share of this land while the deed 'V37' (executed in September 1901), shows that he transferred a 1/12th share of this land thus establishing that in 1901 ('V37') Punchiappuhamy was entitled to a 1/12th share.

Further, according to 'P5' (deed executed in 1899) Punchiappuhamy was entitled to 1/24th share of this land by right of purchase, so that in 1899 at the time 'P6' was executed, the said Punchiappuhamy was the owner of 1/12th + 1/24th shares, and that he therefore had the right to convey gemming rights in respect of 1/12th share on 'P6'.

Counsel for the defendant respondent however contended that the grantors on deed 'V31' and 'V37' are different persons and not the same person.

The learned Trial Judge, having examined the documents 'P6', 'V31' and 'V37' has come to a firm finding that this contention of the defendant was indeed correct. The District Judge, for very cogent reasons given in his judgment has held that the grantor in

'P6' who has described himself as Karangoda Ganegamaethige Punchiappuhamy residing at Getangama was a different person from the grantors on both 'V31' and 'V37'.

Counsel for the appellant strenuously urged that the grantor on 'P6' and the grantor on 'V37' were one and the same person, and that 'P6' being a deed executed in March 1899, should take precedence over the deed 'V37' executed in the year 1901. The learned Trial Judge has however in our view rightly held that the grantor in 'P6' is altogether a different person from the grantor on 'V31', and 'V37', and that the plaintiff has failed to establish title to any gemming rights in this land, that the plaintiff's action had therefore to fail. He has accordingly dismissed the plaintiff's action with costs.

We see no sufficient reason to interfere with his finding. We therefore affirm the judgment of the learned District Judge and dismiss the appeal, with costs fixed at Rs. 1050/-

PALAKIDNAR, J. — I agree.

Appeal dismissed