

MAHINDASOMA  
v.  
GUNAWARDENA AND OTHERS

COURT OF APPEAL.

SENEVIRATNE, J. (PRESIDENT, C/A) AND JAMEEL, J.

C.A. No. S.C. 229/78 (F)–D.C. GALLE 6951/L.

DECEMBER 2, 1985.

*Application for acquisition and re-transfer of land by transferor on conditional transfer–Partition action for land filed by purchaser from transferee–Right to follow property in the hands of such bona fide purchaser–Law No. 16 of 1973–Was application entertained by People's Bank under s.71 (2A) of Law No. 6 of 1973?*

The word "entertain" as used in several sections of the Law No. 16 of 1973 has the meaning of the application having been received and accepted by the Bank.

Law No. 16 of 1973 does not prevent the Bank from following property transferred to a bona fide purchaser by the transferee on the conditional transfer. In the partition action filed by such bona fide purchaser the rights awarded to him will be subject to the rights the original transferor on the conditional transfer may get from the People's Bank on the application made to it which preceded the institution of the partition action.

APPEAL from judgment of the District Judge of Galle.

*J. W. Subasinghe, P.C.* with *D. J. Nilanduwa* for 8th added defendant-appellant.

*K. C. F. Wijewardene* for plaintiff-respondent.

*Cur. adv. vult.*

December 3, 1985

**SENEVIRATNE, J. (President, C/A)**

The plaintiff filed this action for partition of a contiguous land called Ratgampitiyaduwwatta depicted in Preliminary Plan No. 1879 of 21.10.1976 filed of record marked 'X'. According to the pedigree filed by the plaintiff the title to this land devolved on Oliver Abey Siri Gunawardene who married Magilin Suriyaarachchi. The said Oliver died leaving as intestate heirs his wife Magilin Suriyaarachchi and his 7 children, 1 to 7th defendants on whom devolved half of the land respectively. The contest in this case was for the 1/2 share which devolved on the widow, Magilin Suriyaarachchi. The plaintiff claimed title to the half share of Magilin Suriyaarachchi the 8th added defendant. Magilin by transfer deed No. 415 of 4.3.1974 gave a conditional transfer of her interests in the land to Chandra Goonetilleke for Rs. 2,000 with the right to obtain a re-transfer within 1 1/2 years from the date of execution of the deed. This 1 1/2 years expired on 4.9.1975 but by negotiations with Chandra Goonetilleke the 8th defendant, Magilin obtained a further extension of 6 months which extended the date on or before which re-transfer should have been obtained to 4.3.76. The said Chandra Goonetilleke by deed of transfer 7865 of 10.05.76 (P8) transferred her interests to Mahindasoma the plaintiff. Thus on the pedigree filed Mahindasoma claimed 1/2 share of the land on deed P8 and set out 1 to 7th defendants as the owners of the other 1/2 share.

Magilin Suriyaarachchi intervened in the action as 8th defendant and set up a claim that any rights allotted to Mahindasoma the plaintiff should be made subject to any rights she may be entitled to on her application to the People's Bank Law No. 16 of 1973 to obtain a re-transfer of the land to her. Magilin stated that she transferred the land to Chandra Goonatilleke subject to a re-transfer within 2 years (taking into account the extended time) and as Chandra Goonatilleke evaded re-transfer of the land to her though she asked for a re-transfer, the time for re-transfer elapsed. Chandra Goonatilleke transferred the land to Mahindasoma. At the trial the title to the land, that Magilin Suriyaarachchi was entitled to 1/2 share and her children to other 1/2 share together was admitted. The other contest was as to whether any right should be reserved for Magilin. Thus at the trial only 2 issues were raised:—

1. As stated in paragraph 10 of the defendant's answer has the 8th defendant made an application under the Finance Act to the People's Bank to obtain a re-transfer of her rights in the subject-matter?
2. Are all the orders in this case subject to the rights to relief which the defendant is entitled to obtain under the provisions of the said Act?

Magilin Suriyaarachchi led evidence to the effect that she had made an application to the People's Bank on 20.6.76 (8D1) to get a re-transfer of the land. An Officer of the People's Bank gave evidence and stated that the application of Magilin under Law No. 16 of 1973 was received by the People's Bank and an officer was sent to the Lands Registry to do a search regarding this land. Then it was discovered that a *lis pendens* in this partition action has been registered and as such the People's Bank did not take any further steps. At the trial the main question which arose and which the learned Judge discussed was whether at the time this action was filed by the plaintiff the Bank had in terms of amendment Law No. 16 of 1973, "entertained" an application for the acquisition of the premises in terms of provisions 2A (a) and 2A (b) of the said act or any one of them. The learned judge held that his view was that the Bank had not "entertained", the application for acquisition made by Magilin in terms of the said section 71 (2A) and as such there was no application of Magilin for the acquisition of the land pending in the People's Bank at the time the action was filed.

The plaintiff further took up the position that he was the bona fide purchaser of the 1/2 share for valuable consideration and was entitled to the said 1/2 share free of any rights of Magilin to have the land acquired for her by the People's Bank. At the hearing of this appeal before this court, learned counsel for the plaintiff-respondent made a further submission that the plaintiff Mahindasoma was a third party who had obtained a transfer from Chandra Goonatilleke for valuable consideration without notice of Magilin's application to the People's Bank that there was no provision in the said Law for Magilin to follow the land to Mahindasomma and get it acquired through the Bank.

We will first consider whether at the time of this action the People's Bank had entertained Magilin's application. We do not agree with the learned District Judge that the application to the People's Bank in terms of section 71 of the Finance Act and Ceylon State Mortgage Bank (Amendment) Law, No. 16 of 1973 is entertained by the Bank when one or more provisions of section 71 (2A) are taken into account. We hold that the word "entertain" as used in this act in several sections has the meaning of the application having been received and accepted by the Bank. At that stage the Bank can be said to have entertained the application. It is after receiving and accepting an application that the Bank can take steps under section 72 (2A). On the facts of this case the Bank has received and accepted the application of Magilin as shown by the fact that an officer was sent to the Land Registry of Galle to make a search. The Bank quite rightly did not take steps as a *lis pendens* in this partition action has been registered. In any case Magilin had forwarded the application dated 20.6.76 before the plaint was filed which application has been received by the Bank on 23.6.76.

We will now consider the 2nd submission that there is no provision in law for the People's Bank to follow the transfer to Mahindasoma for the purpose of acquisition. Regarding the issues raised in this submission the relevant provision of Law, No. 16 of 1973 is silent one way or the other. Learned President's Counsel for appellant submitted that it is the policy of the law to acquire the lands, for those who have lost their lands. In terms of this Finance Act and in the execution of this policy even the transfer to a third party (as in the case of the plaintiff in this case) must be caught up. Some light is thrown on this issue when we consider the provisions of the Finance Act, No. 11 of 1963 section 71 (2) (c) (ii) which deals with the acquisition under this Act of a land

purchased bona fide for valuable consideration by a purchaser of such premises from the person to whom such premises were sold or transferred. Section 71 (2) specifically lays down a provision for land to be acquired if the Bank is satisfied of the conditions set out above that is section 71 (2) (c) (ii). This provision has been dropped from the current law that is Law No. 16 of 1973. There is no doubt that the legislature has done this with a purpose that is not to permit even a bona fide purchaser to deprive the transferee who gave a land on a conditional transfer of the land. We hold that the relevant Law No. 16 of 1973 does not prevent the Bank from following the property transferred to the plaintiff in this case for acquisition on the application made by Suriyaarachchi who gave the conditional transfer. Whether Magilin is entitled to relief from the People's Bank is the matter for the decision of the Bank.

We accordingly agree with the submissions made on behalf of the 8th added defendant-appellant and set aside the judgment of the learned District Judge dated 20.7.78, to the extent that a direction should be made in the decree that the interests which the plaintiff will become entitled to will be subject to any rights the 8th intervening defendant-appellant may get from her application to the People's Bank (8D1) on 20.6.76. The appeal is allowed with costs of contest in both courts fixed at Rs. 250.

**JAMEEL, J.** – I agree.

*Appeal allowed.*

*Decree varied.*