

1956

*Present* : Basnayake, C.J., and K. D. de Silva, J.

M. IBRAHIM, Appellant, and N. ADUME, Respondent

*S. C. 274—D. C. Matale, M. S. 290**Promissory note—“ Valuable consideration ”—Bills of Exchange Ordinance, ss. 27, 90.*

In an action on a promissory note the evidence showed that the defendant had given the promissory note to the plaintiff in exchange for the purported surrender by the plaintiff of his “ rights ” to purchase a land under an agreement which was, in fact, null and void for the reason that it was oral and did not satisfy the requirements of section 2 of the Prevention of Frauds Ordinance.

*Held*, that the promissory note was unenforceable as there was no “ valuable consideration ” in the sense in which that expression is used in section 27 of the Bills of Exchange Ordinance.

**A**PPPEAL from a judgment of the District Court, Matale.

*H. V. Perera, Q.C.*, with *T. B. Dissanayake* and *G. D. C. Weerasinghe*, for defendant-appellant.

*C. G. Weeramantry*, with *Ananda Karunatileke*, for plaintiff-respondent.

*Cur. adv. vult.*

May 2, 1956. BASNAYAKE, C.J.—

This is an action on a promissory note. The appellant (hereinafter referred to as the defendant) and the respondent (hereinafter referred to as the plaintiff) agreed orally with another, one E. I. Senanayake, to buy for the sum of Rs. 38,000 a block of land in extent 20 acres 3 roods known as the Kalalpitiya Division, out of an Estate known as Ukuwela Estate which Senanayake had purchased for the purpose of blocking up and selling. The defendant was the moving spirit in the transaction. The arrangement between the plaintiff and the defendant was that the plaintiff should pay Rs. 5,500 and the defendant the balance.

On 16th October 1950 the first instalment of Rs. 3,500 was paid and in the receipt which was given by Senanayake the names of both plaintiff and the defendant were mentioned and the payment was described as an advance on the sale of Kalalpitiya Division, a block 20 acres, 2 roods, and 15 perches in extent. The receipt also stated that a sale agreement was to be signed on 5th November 1950 and that 50 per cent. of the balance advance of the purchase price of Rs. 38,000 was to be paid on signing the agreement. But such an agreement was never signed.

The defendant made further payments and completed the payment of the entire sum and received the transfer of another block in exchange for the Kalalpitiya Block which he had agreed to purchase.

The plaintiff contributed only Rs. 1,000 towards the purchase price. According to the defendant this contribution was made in two instalments of Rs. 500 but the plaintiff says it was made in one instalment of Rs. 1,000.

The plaintiff's version is that for a contribution of Rs. 5,500 he was to get 5 acres of land and a line room; but according to the defendant the extent of the land to be given was 3 acres, 3 roods and 28 perches.

Either because of the plaintiff's inability to pay the balance sum due from him or on account of the defendant's desire to purchase the entire land, it was agreed that the defendant should refund the Rs. 1,000 paid by the plaintiff and give him a promissory note for Rs. 1,500 payable in three months in exchange for his "rights".

It is common ground that out of the amount stipulated in the promissory note the defendant paid Rs. 100. This action is to enforce the payment of the balance Rs. 1,400 with interest thereon at 6 per cent. as stipulated in the note.

The defendant and the plaintiff are at variance as to why the promissory note was given. The defendant states that it is for loss of profits, the plaintiff states that it is for the surrender of his rights.

The sole question that was raised at the trial and in appeal was whether there was valuable consideration for the promissory note and if not whether the action could be maintained.

Counsel for the defendant against whom judgment has been given by the District Judge argued that the promissory note was unenforceable as there was no consideration for it.

He submitted that as the oral agreement between the plaintiff and the defendant in regard to the purchase by the former of a portion of the land that the latter had arranged to buy from Senanayake was of no force or avail in law the plaintiff had no "rights" which he could surrender. There was therefore no consideration for the promissory note.

Learned Counsel for the plaintiff contended that there was consideration as the right which the plaintiff gave up though not enforceable in law was something that had some value and that for surrendering something of value to him he took the promissory note which was therefore enforceable. We are unable to uphold the submission of Counsel for the plaintiff.

Section 27 of the Bills of Exchange Ordinance prescribes how valuable consideration for a Bill may be constituted. Section 90 makes the provision of the Ordinance relating to Bills of Exchange applicable with necessary modifications to promissory notes.

There can be no valuable consideration in the sense in which that expression is used in the Ordinance in an agreement which is null and void, for, that is the effect of an agreement that does not satisfy the requirements of section 2 of the Prevention of Frauds Ordinance<sup>1</sup>.

I would therefore allow the appeal with costs.

K. D. DE SILVA, J.—I agree.

*Appeal allowed.*

<sup>1</sup> *Arakkumiratne v. Perera* (29 N.L.R. 312).