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Present: Ennis J. and De Sampayo A.J.

SAPATHIPILLAI v. TIRUMANCHANAM.

329—D. C. Batticaloa, 3,653.

*Deaf and dumb person—Capacity to execute deed of conveyance.*

A deed executed by a deaf and dumb person was held to be good.

IN this case the plaintiff and appellant, claiming to be the owner of an undivided 111/120 share of a piece of land called Tirappu Valavu, sought to partition it in this suit against the minor defendant Kandavanam Thirumanchanam, appearing by his guardian *ad litem* the defendant and first respondent. The defendant filed answer admitting the correctness of the share allotted to the minor, but alleged that deed No. 2,073 dated August 1, 1912 (P 3), which was executed by his stepdaughter Sanmugam Sinnatangam, who was deaf and dumb, and another, was inoperative in law to pass title to the plaintiff for her 29/120 share of the land which the deed purported to convey.

The learned District Judge thereon caused notice to issue to the above-named Sanmugam Sinnatangam, and she was made an added defendant. She failed to file answer.

At the trial the District Judge (T. W. Roberts, Esq.) tested Sinnatangam's capacity to understand matters:—

I test Sinnatangam's ability to understand by putting her various questions through Seenitamby, and also through Kandavanam.

Q.—How did you cross the river to-day, in a big or little boat ?

A.—A little boat.

Q.—How many persons with you ?

A.—Two.

Q.—Have you signed any deeds ?

A.—Yes.

Q.—Did you receive money from plaintiff ?

A.—No ; Seenitamby got the money.

Plainly she can understand many things.

Judgment to-morrow.

T. W. ROBERTS.

JUDGMENT.

By the deed P 3 Sinnatangam and her brother Seenitamby purported to convey their shares of the land to be partitioned to the plaintiff.

Sinnatangam has filed no answer contesting the plaintiff's claim, but the counsel for defendant as *amicus curie*, and in the interest of Sinnatangam, drew my attention to the fact that Sinnatangam is deaf and dumb.

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I have therefore to consider whether the due execution of this deed has been proved in so far as concerns the transfer of Sinnatangam's interest. The Roman-Dutch law, so far as I can find, regarded the deaf and dumb as incapable of making wills. By analogy it might perhaps be considered that they are also incapable of making conveyances, except under authority of the sovereign and after due inquiry as laid down by Grotius.

By the English law it seems that the deaf and dumb, if they cannot read or write (as is the case here), are presumed to be incapable of making such a contract, unless it is shown that they understood its nature by virtue of the use of signs.

Considered from this standpoint, it is in evidence that Sinnatangam is able to converse by signs to some extent, and it is proved that she touched the pen after the notary had made certain efforts to have the purport of the deed explained to her by her brother. There is also no doubt that plaintiff paid the consideration. I tested Sinnatangam in Court, and she is certainly intelligent in a considerable degree. She appeared to say that she had in fact signed the deed, but that her brother had taken the money. So far the facts are with plaintiff, but they do not amount to proof that Sinnatangam understood the contract on which she was entering.

She can understand certain matters of a sort describable by signs, but I am not satisfied that she can be made to understand that a certain document was a sale as distinguished from a lease or a mortgage. I find that the deed P 3 did not validly transfer her title, and that she remained the owner of her share. I have added her as defendant, and find the title to be otherwise proved as stated in the plaint. Enter interlocutory decree allotting the shares accordingly to plaintiff, to defendant, and to Sinnatangam. Costs *pro rata*. Plaintiff may sue for return of his money.

The plaintiff appealed.

*Bartholomeusz*, for appellant, cited *Chitty on Contracts 154; Nathan, vol. II., ss. 749 and 852.*

No appearance for respondent.

*Cur. adv. vult.*

November 4, 1913. ENNIS J.—

The only point for determination in this appeal is whether a transfer of land executed by one Sinnatangam, a deaf and dumb woman, is effective to pass title.

The learned District Judge was satisfied that the woman possessed a large degree of intelligence, and was able to communicate with others and understand them by means of signs, and the notary before whom the deed was executed gave evidence that the transaction was explained to her by signs.

In my opinion the deed passed a good title. Sinnatangam was not an imbecile or lunatic. She did not suffer from any disability which affected her capacity to contract, and there is reason to suppose she understood what she was doing. She has been twice

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married, and the evidence leaves no doubt that she was capable of forming a rational judgment on matters affecting her interests. She was, therefore, competent to contract.

It has been urged that under Roman-Dutch law a deaf and dumb person could not make a will. I do not propose to consider whether this is so now, because the making of a will and the making of a contract are two different matters, governed by different considerations. No authority has been shown that by Roman-Dutch law a deaf and dumb person could not make a valid contract when capable of understanding the nature of the act, and, in the absence of conclusive authority on the point, I find myself unable to hold a contract invalid which has been made with the free consent of a person of sound mind.

The decree should, I consider, be amended, and the share allotted to the added defendant should go to the plaintiff.

I would amend the decree accordingly, with costs.

DE SAMPAYO A.J.—I agree.

*Varied.*

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