

1940

Present: Howard C.J. and Wijewardene J.

DIAS v. SILVA

234—D. C. Galle, 36,097

Sale of land—Right to a re-transfer reserved—Sale of transferor's right in execution—Vesting of property in purchaser—Transferee, a bidder at execution sale—Etoppel—Civil Procedure Code, s. 341.

The defendant purchased certain property from A by deed of transfer containing a provision whereby the defendant agreed with A that the latter his heirs, executors, and administrators, but not his assigns, should be entitled to a transfer of the property before August 11, 1937, on payment of the purchase price with interest.

In execution of a decree against A, his rights under the deed were duly seized and sold by the Fiscal and purchased by the plaintiff on May 13, 1937, for a sum of money paid at the sale at which the defendant himself was a bidder.

An application by A to set aside the sale was refused by the District Court and the sale was confirmed on August 9, 1937. In appeal the sale was set aside and the case sent back for further inquiry.

But eventually, the sale was confirmed by the Supreme Court.

On August 7, 1937, the plaintiff instituted the present action claiming a re-transfer as provided in the deed.

Held, that the right to a re-transfer under the deed vested in the plaintiff, in terms of section 275 of the Civil Procedure Code, on payment by him of the purchase money when the sale became absolute.

If an order of Court is required, the order made on August 9, confirming the sale must be regarded as compliance with the section.

Held, further, that the defendant was estopped from denying the right of the plaintiff to purchase at the Fiscal's sale A's right to ask for a re-conveyance of the property, having been a bidder at the sale himself.

A PPEAL from a judgment of the District Judge of Galle.

H. V. Perera, K.C. (with him *E. B. Wickremanayake* and *H. A. Chandrasena*), for the plaintiff, appellant.

N. E. Weerasooria, K.C. (with him *N. Nadarajah, U. A. Jayasundera,* and *V. F. Guneratne*), for the defendant, respondent.

Cur. adv. vult.

February 12, 1940. HOWARD C.J.—

This is an appeal by the plaintiff-appellant from an order made by the District Judge of Galle on July 29, 1938, dismissing the plaintiff's action with costs. The case has arisen out of a deed of Conditional Transfer No. 630 dated October 8, 1934, by which one E. W. Alahakoon for the sum of Rs. 750 transferred certain property to the defendant. This deed contained a provision whereby the defendant agreed with the said Alahakoon that the latter his heirs, executors and administrators, but not his assigns should be entitled to a transfer of the said property on or before August 10, 1937, on the payment of the said sum of Rs. 750 and interest at 16 per centum per annum. In execution of a decree against Alahakoon in D. C. Galle, case No. 33,457, his rights under the deed were duly seized and sold by the Fiscal and purchased by the appellant on May 13, 1937, for the sum of Rs. 315 paid at the said sale at which the defendant himself was a bidder. E. W. Alahakoon thereupon filed papers to set aside the sale. but his application was dismissed and the sale confirmed by the Court on August 9, 1937. E. W. Alahakoon appealed to the Supreme Court against the dismissal of this application and on November 17, 1937, the appeal was allowed and the case sent back for further inquiry. At the further inquiry the sale was set aside but on appeal this order was reversed and the sale confirmed on July 1, 1938, by a Supreme Court Bench constituted of Maartensz and Keuneman JJ. who held that the interest of Alahakoon in the deed was rightly sold by the Fiscal as movable property. Meanwhile on July 14, 1937. the appellant's proctor wrote a

letter to the respondent tendering the full amount due on the deed. On August 7, 1937, the appellant instituted this action claiming a re-transfer as provided in the deed and depositing in Court the amount due under its terms.

The decision of the learned District Judge in dismissing this action was based on his interpretation of sections 274 to 281 of the Civil Procedure Code. In this connection he held that an order of the Court vesting the property in the purchaser is necessary under section 281 and that, at the date when the action was filed, no such order had been made. In these circumstances, at this time the plaintiff had no right to ask for a re-transfer and his action was dismissed without prejudice to his right to bring any subsequent action. Before embarking on a consideration of the various other matters that arise in this case, I propose to deal with the question as to whether the decision of the District Judge on this point is correct. Counsel for the appellant contends that the right to a re-transfer under the deed vested in the latter under the provisions of section 275 on payment by him of the purchase money when the sale became absolute. Neither by Roman-Dutch law nor by statutory provision was any further document or action required to vest this right in the appellant. I have found singularly little authority either in the decisions of the Courts or from the authorities on the Code on the interpretation to be placed on those sections to which I have referred. I am, therefore, of opinion that the words of section 281 must be given their ordinary meaning when read with the context, that is to say, the other provisions dealing with the sale as disposition of property seized. It is apparent that the provisions with regard to sales of movable and immovable property differ in respect of the very material particular. By virtue of section 275 the sales of movable property become absolute on payment of the purchase money at the sale. Sales of immovable property by virtue of section 282, on the contrary, do not become absolute until after thirty days. Such sales, moreover, require confirmation by the Court. So far as the sale of movable property is concerned, the provisions of section 275 fixing the time when the sale becomes absolute are supplemented by sections 277, 278, 279, 280, and 281. These sections do not, to my mind, limit the title to the property granted by section 275 but supply machinery necessary to confer full possession and ownership in the purchaser, when such machinery is required by reason of the particular type of property. Thus, section 277 provides that in regard to certain classes of movable property the title conferred by the receipt given under section 275 in respect of the absolute sale shall be completed by delivery. Section 278 provides for delivery in respect of another class of property. Section 279 is intended to override difficulties that may be experienced by purchasers in obtaining possession of debts not secured by negotiable instruments and shares in public companies or corporations. Section 280 gives a permissive power to a Judge to endorse negotiable instruments and shares when such endorsement is necessary to complete the transfer. These provisions seem to me to provide for special cases when the vesting of full ownership and possession cannot be effected by the receipt given for the purchase money at the sale. Section 281 in my opinion must be regarded from a similar aspect and is intended to make provision for any case, not dealt with under the

preceding provisions, when further action is required. Like section 280 the power vested in the Court is permissive and to my mind it is intended that a document is only to be executed when necessary. Similarly a Court order will be made if such action is required. In the present case it seems to me that there is no provision of the law requiring either an order of the Court or a document. If the view is taken that an order of Court is required, the orders of the Court made on August 9, 1937, and subsequently on July 1, 1938, confirming the sale of May 13, 1937, must be regarded as compliance with the section. These orders vest the property in the appellant as from May 13, 1937. For the reasons I have given I am therefore of opinion that the decision of the District Judge was wrong and the plaintiff when he filed the action was entitled to ask for a re-transfer.

At the trial before the District Judge the respondent took the further point that in view of the words "but not assign" in the deed, the plaintiff who is a purchaser at the Fiscal's sale is not entitled to ask for a re-transfer and that the only persons who can do so are the defendant, his heirs, executors and administrators. It was contended by the appellant both in this Court and the Court below that the respondent by reason of his conduct at the sale when he was himself a bidder for the right sold is estopped from denying the right of the appellant to reconveyance. This issue was found by the District Judge in favour of the appellant. I have been referred by Counsel for the latter to a statement of the English law with regard to estoppel as formulated by Spencer Bower on Estoppel by Representation, 1923 edition, page 46, paragraph 55, and also page 195, paragraph 229. The law of "Estoppel by Representation" has also been considered by this Court on various occasions, particularly with regard to the conduct of persons at sales. In *Caruppen Chetty v. Wijesinghe*¹, it was held that a man who, having a charge or encumbrance upon a property, stands by and allows another to advance money on it, or, for that matter, to buy it under the impression that it is unencumbered, knowing that the latter is going to advance money, is estopped from setting up that interest against the title of the person whom he has deceived. In *Fernando v. Fernando*², it was held by Lascelles A.C.J., that in order to create an estoppel by acquiescence, it is essential to show that the plaintiffs, knowing that a violation of their rights was in progress stood by and so misled the first and second defendants. In *Saparamadu v. Saparamadu*³, the first defendant took a conveyance from the second defendant of the land in question and registered the same. Thereafter the land was sold in execution against the second defendant. The first defendant was present at the sale, but did not notify to the bidders at the sale that he had purchased the same. On an action by the purchaser for declaration of title it was held that the first defendant was estopped from setting up title to the same. In *Rodrigo v. Karunaratne*⁴, it was held that to establish an estoppel, it must be proved that the action taken by the party seeking to establish the estoppel was directly connected with the false impression caused by the representation or conduct of the party sought to be estopped. The representation or the conduct producing the

¹ 14 N. L. R. 152.

² 14 N. L. R. 155.

³ 20 N. L. R. 369.

⁴ 21 N. L. R. 360.

impression must be, in effect, an invitation to the person affected by it to do a particular act. But it need not be proved that the party sought to be estopped knew the truth about the facts which he by his statement or his conduct misrepresented. Applying the principles laid down by these decisions to the present case it would appear that the defendant by bidding at the Fiscal's sale has by his conduct represented that the interest put up for auction was one that could be the subject of a valid sale. It was an invitation to the plaintiff to bid. Moreover the plaintiff has given evidence to the effect that he would not have bidden at the Fiscal's sale if the defendant had raised an objection. In my opinion the defendant is estopped from denying the right of the plaintiff to purchase at the Fiscal's sale Alahakoon's right to ask for a reconveyance of the property. The District Judge's finding on this point is therefore affirmed. In view of my ruling on this point the question of the exact interpretation to be placed on the expression "but not assigns" in the deed of October 8, 1934, is not material.

In the circumstances the judgment and decree of the District Judge must be set aside and judgment entered in appellant's favour as claimed together with costs both in this Court and the Court below.

WIJEYWARDENE J.—I agree.

Appeal allowed.