

1916.

Present: Wood Renton C.J. and Shaw J.

SANGARAPILLAI v. KANDIAH et al.

442—D. C. Jaffna, 10,792.

Trust—Purchase of land in the name of another without that person's knowledge.

A agreed to buy a land from B and paid the purchase money, but, fearing some litigation, obtained a conveyance in the name of C without C's knowledge. A informed C subsequently of the execution of the deed in C's favour, and C acquiesced in it, and agreed to transfer the land to A whenever called upon.

Held, that C held the land in trust for A, and that C could maintain an action for a conveyance for the land from C, or if C had parted with the land, to recover its value.

THE facts are set out in the judgment.

A. St. V. Jayawardene (with him Balasingham), for appellant.

Wadsworth (with him J. Joseph), for respondent.

Cur. adv. vult.

December 6, 1916. SHAW J.—

The appellant sued the respondent for a declaration that a certain transfer deed of November 20, 1905, by which an undivided one-sixth share of a land called Koyilkadu was conveyed by one Velanthar Sinnappu to the respondent, was executed in favour of the respondent in trust for the appellant. The appellant prayed for an order that the respondent should be ordered to execute a conveyance in his favour, or in the alternative, if he was unable to do so, that he should be ordered to pay Rs. 450 as damages.

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Originally, one Kandiah, to whom the respondent had conveyed the interest in the land by deed of August 28, 1915, was joined as a defendant in the action, but the appellant subsequently abandoned the claim against him, and restricted his prayer to one for damages against the respondent.

At the hearing the appellant gave evidence to the effect that, although the deed of November 20, 1905, was executed in favour of the respondent, the appellant was the real purchaser and paid the purchase money, and that he had got the deed executed in favour of the respondent, because he thought there might be litigation respecting the transaction. According to his evidence the respondent was not aware of the transaction at the time, but was told by the appellant of it subsequently, and acquiesced in it, and even agreed to transfer the interest to the appellant when called upon.

During the appellant's evidence the Judge stopped the case and gave judgment for the respondent, saying in his judgment that an informal promise by the respondent to convey the land, such as was suggested by the evidence, had no binding effect, and that it was not possible to base upon the facts given in evidence any structure of trust.

I am unable to agree with the District Judge. It is well-established law in England that where a purchase is made in the name of a stranger, a trust of the legal estate results in favour of the person out of whose pocket the money for the purchase has come (see *Lewin on Trusts, 11th ed., p. 178*, and the numerous cases there cited). "The clear result," said Lord Chief Baron Eyre in *Dyer v. Dyer*¹ "of all the cases, without a single exception, is that the truth of a legal estate results to the man who advances the purchase money," and this is so whether the property purchased be movable or immovable. In such cases the Statute of Frauds cannot operate to prevent proof of what the real transaction was, for the Statute of Frauds cannot be used to cover a fraud (*Lewin 160*).

The presumption that arises in favour of a trust to the real purchaser is, however, no more than an arbitrary implication in the absence of reasonable proof to the contrary, and the nominal purchaser is at liberty to rebut the presumption by the production of evidence showing the intention of conferring the beneficial interest on him (see *Lewin 185* and cases there cited).

Similar principles to those obtaining under the English law have been recognized here (see *Ohlmus v. Ohlmus*,² *Mohamadu Marikar v Ibrahim Naina*³), and they are in accordance with the important principle of the Roman-Dutch law, that no person shall be enriched at the expense of another.

¹ 2 Cox 93.² (1906) 9 N. L. R. 183.³ (1910) 13 N. L. R. 187.

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The evidence given at the end of the appellant's examination, that the respondent agreed to transfer the property to him, appears to me to be admissible, not, indeed, to prove any agreement to convey, but to show that the respondent recognized that a trust existed in favour of the appellant.

I would set aside the judgment appealed from, and send the case back for the evidence to be proceeded with, and for further determination of the issues. The appellant should have the costs of this appeal.

WOOD RENTON C.J.—I agree.

Sent back.

