

1952

*Present* : Rose C.J. and Gunasekara J.

K. MUTHUVEL *et al.*, Appellants, and N. A. MARKANDU  
*et al.*, Respondents

*S. C. 156—D. C. Point Pedro, 3,500*

*Contract—Transfer of property—Option to repurchase—Necessity for tender of price for re-conveyance.*

Where property is transferred subject to the condition that if the transferor pays a certain sum within a specified period the transferee should execute a re-transfer of the property, it is unnecessary for the transferor to tender the money if, prior to the expiry date of the option, the transferee repudiates the transferor's right to a re-transfer.

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

*C. Thiagalingam, Q.C.*, with *H. W. Tambiah* and *D. Vivekanandan*, for the plaintiffs appellants.

*E. B. Wikramanayake, Q.C.*, with *H. Wanigatunga*, for the 1st, 2nd and 3rd defendants respondents.

*Cur. adv. vult.*

November 19, 1952. ROSE C.J.—

The plaintiff-appellants, who are husband and wife, ask that the first, second and third defendant-respondents be required to execute an instrument conveying a certain land to the second appellant who is the wife of the first appellant.

It is common ground between the parties that the land in question belonged to the fourth and fifth respondents who are husband and wife; that it was transferred on deed No. 4056 of 26th May, 1947, by the fourth respondent to the first, second and third respondents, subject to the condition that if the fourth respondent paid a sum of Rs. 3,000 with interest at 12 per cent. within three years from the above date the first to the third respondents were to execute the re-transfer of the said land; and that on 1st February, 1949, by deed No. 421 the fourth respondent assigned by way of dowry to his daughter the second appellant her (4th respondent's) right to obtain the re-transfer.

The present action was filed on 1st July, 1949, that is to say, some ten months before the expiry date of the option. One of the issues in the court below was whether or not the first appellant tendered the money. The learned District Judge found that he did not and I would not wish to disturb that finding. The appellants, however, contend that the question of tender becomes irrelevant in view of the fact that there was a denial prior to the expiry date of the option of the plaintiff's right to a re-transfer.

In this connection the two letters P9 and P14 have relevance, no reply being received to either letter.

“ P9.

No. 87

A. N. Velayutham,  
Proctor,  
Valvetturai,  
20-5-49.

N. Appukuddy Mathkandu, Esq.,  
Vaiththanai,  
Valvattiturai.

Dear Sir,

I am instructed by my client Sivapackiam wife of Muthuvel of Valvetiturai, to inform you that my client the said Sivapackiam has obtained an assignment by way of dowry of the right to obtain a re-transfer of the land called Viththanai in extent 4,  $\frac{1}{4}$  Lms v. c. and reserved in favour of Ramupillai Manickam in deed No. 4056 dated 26th May, 1947 and attested by S. Appadurai, Notary Public, by virtue of deed No. 421 dated 1.2.1949, attested by me and executed by the said Ramupillai Manickam.

I am further instructed to inform you that my client will take the necessary steps to obtain the re-transfer in due course.

I am further instructed to inform you that you are not entitled to re-transfer the said land to the said Ramupillai Manickam or to any one else and that in case you do so, an action will be filed against you to obtain the necessary conveyance in my client's favour.

Yours sincerely,

A. N. VELAYUTHAM,  
Proctor.

P 14.

A. N. VELAYUTHAM,  
Proctor,  
Valvetiturai,  
20.5.49.

Ammal wife of Ramupillai Manickam,  
Valvetiturai.

Dear Madam,

I am instructed by my client Sivapackiam wife of Muthuvelu of Valvetiturai to inform you that my client the said Sivapackiam has obtained an assignment by way of dowry of the right to obtain a re-transfer of the land called Viththianai in extent 4,  $\frac{1}{4}$  Lms v. c. and reserved in favour of Ramupillai Manickam in deed No. 4056 dated

26th May, 1947 and attested by S. Appadurai N. P., by virtue of deed No. 421 dated 1.2.1949 attested by me and executed by the said Ramupillai Manickam.

As my client understands that you are taking steps to purchase the land called Viththanai in extent 4,  $\frac{1}{2}$  Lms v. c. from certain N. Appukuddi Mathkandu, N. Appukuddi Thambirajah, N. Appukuddi Varnakulasingham of Valvetiturai, I am further instructed to inform you that my client the said Sivapackiam is entitled to obtain a conveyance of the said land and that you have no right to buy the said property.

I am further instructed to inform you that in case you obtain a transfer of the said land, an action will be filed against you to obtain a declaration that your rights, if any, are subject to the right of my client to obtain a transfer on payment of a sum of Rs. 3,000 and interest and to obtain the necessary conveyance.

Yours sincerely,

A. N. VELAYUTHAM,  
Proctor.”

Moreover the answer of the first to the third respondents filed on 15th September, 1949, contains *inter alia* the allegation that they had received no notice of the assignment to the second appellant by the fourth respondent.

I agree with the contention of learned Counsel for the appellants that the answer, taken as a whole, amounts in effect to a repudiation of the appellants' right to a re-transfer, in that the position taken up by the respondents is inconsistent with the acceptance of that right.

It would seem, therefore, that the appellants have successfully brought themselves within the principle<sup>1</sup> that when a party to an agreement to re-transfer repudiates at a point of time prior to the expiration of the period of the option, it is unnecessary for the other party to allege or prove tender.

That being so, the appeal must be allowed, the judgment of the District Court set aside, and judgment entered for the appellants as prayed for, on condition that they deposit in Court on or before 31st January, 1953, a sum of Rs. 3,780.

In that event the 1st, 2nd and 3rd respondents will pay the costs of this appeal and of the proceedings in the Court below.

In the event of the appellants failing to deposit in Court the said sum of Rs. 3,780 on or before the said date, the appeal will be dismissed with costs, payable to the 1st, 2nd and 3rd respondents.

GUNASEKARA J.—I agree.

*Appeal allowed.*

<sup>1</sup> *Appuhamy and others v. Silva*, 17 N. L. R. 238 ; *Hailsham 7*—page 199.