

1947

Present : Canekeratne and Dias JJ.

GUNAPALEE, Appellant, and JORANIS APPUHAMY,  
Respondent.

465—D. C. Kegalla, 3,089.

*Contract—Sale of land with option to re-purchase—Conditions necessary for obtaining re-transfer.*

Plaintiff sold a land to the defendant who undertook to re-transfer it if the plaintiff paid within a certain period the sum of Rs. 830 "together with expenses incurred for putting up additional buildings on the said land".

A few days before the expiration of the period plaintiff tendered Rs. 830 and requested the defendant to re-transfer the land to her.

There was nothing to show that the defendant at any time informed the plaintiff what the expenses of the additional buildings put up by him came to.

*Held.* that there had been no failure on the part of the plaintiff and that the defendant was bound to execute a re-transfer.

**A** PPEAL from a judgment of the District Judge, Kegalla.

C. Renganathan (with him C. Chellappah), for the plaintiff, appellant.

S. R. Wijayatilake (with him R. S. Wanasundera), for the defendant, respondent.

October 1, 1947. CANEKERATNE J.—

The plaintiff sued the defendant to obtain the re-transfer of a land which she had sold to the defendant about seven years before. According to the terms of the agreement the defendant undertook to re-transfer the land to the plaintiff if the plaintiff paid him Rs. 830, "together with expenses incurred for putting up additional buildings on the said land". A few days before the expiration of the period she requested the defendant to re-transfer the land to her and tendered Rs. 830. He refused to execute a re-transfer. The plaintiff followed this up by instituting an action; in the answer the defendant stated that he put up the new buildings at a cost of Rs. 500, and as the plaintiff has only attempted to pay the sum of Rs. 830, the defendant refused to accept that amount only. There is nothing to show the defendant at any time informed the plaintiff what the expenses of the additional buildings put up by him came to. The only person who would have known the expenses of putting up the building would be the defendant and it is part of his obligation to inform the plaintiff at the time the tender was made what the expenses amounted to. The rule generally is that where a party stipulates to do a thing which lies within the peculiar knowledge of the opposite party, then notice must be given to him. There has been no failure on the part of the plaintiff and the defendant is bound to execute a re-transfer and if he fails within such time as is specified by the court to do so the court will take steps to have a re-transfer of the land in favour of the plaintiff executed.

The plaintiff is entitled to the costs of the trial and the costs of the appeal. Counsel for the appellant states that they are prepared to pay a sum of Rs. 150, which seems to be the amount spent by the defendant in putting up the building.

If the plaintiff does not pay the sum of Rs. 150 within the period of two months of the record going back to the District Court, the defendant will be entitled to apply for a writ of execution in respect of that sum.

DIAS J.—I agree.

*Appeal allowed.*

