

(1941) 09 MAD CK 0027
In the Madras High Court

Muttapukuntla Chinnapareddi	Vs	APPELLANT
Masineni Venkataramanappa and Others		RESPONDENT

Date of Decision : 09-09-1941

Acts Referred:

Transfer of Property Act, 1882 — Section 6(e)

Citation : AIR 1942 Mad 209 : (1941) 54 LW 491 : (1941) 2 MLJ 695

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—The appellant sold some properties to respondents 2 and 3. The sale was, however, set aside at the instance of two persons

who claimed to be the real owners thereof. Their claim was upheld and the sale by the appellant in favour of respondents 2 and 3 was declared

invalid. Thereafter respondents 2 and 3 assigned their right to get the purchase money from the appellant to the first respondent (plaintiff) under Ex.

A dated the 9th of February, 1937. The first respondent then filed this suit for recovery of the purchase money from the appellant on the strength

of Ex. A the deed of assignment in his favour. The sole question in the second appeal is whether Ex. A is a valid assignment.

2. It was urged for the appellant who was the first and the contesting defendant that the right of respondents 2 and 3 which accrued to them as a

result of the sale in their favour being set aside, was a right to sue for damages and that being a bare right to sue, it was not assignable at law being

opposed to Section 6 (e) of the Transfer of Property Act. Both the lower Courts held that the right which respondents 2 and 3 assigned in favour

of the plaintiff 1st respondent was one to recover an ascertained amount and an actionable claim, and not a mere right to sue for damages. The suit

was accordingly decreed by both the Courts.

3. In second appeal Mr. Lakshmayya, the learned advocate for the appellant, urges that the view taken by the lower Courts as to the nature of the

right which accrued to respondents 2 and 3 by the sale to them being declared invalid has not been properly understood by both the Courts.

4. If it is a bare right to sue that the respondents 2 and 3 got on the sale in their favour being set aside, then, it is obvious that a transfer of the same

would be prohibited by Section 6 (e) of the Transfer of Property Act and that the first respondent would have no right to sue. The question is not

free from difficulty but I think it is covered by the decision of the Judicial Committee in (1931) L.R. 59 I.A. 41 (Privy Council) . A lease contained

an agreement by the lessee to pay the Government revenue and there was a provision that if he committed a breach of the covenant, he should be

liable to pay damages to the lessor. The lessee failed to pay certain instalments of revenue. Then the lessor sold the property to a, third person who

paid those instalments from out of the purchase money. Later, the lessor executed a document by which he assigned to the purchaser his right to

recover the instalments from the lessee. The question was whether the right which the lessor obtained on the lessee committing default in the

payment of the revenue to the Government which the lessor ultimately paid, was a bare right to sue, in which case the assignment of that right

would not be a valid one. The suit was filed by the assignee to recover the instalments of revenue which remained unpaid by the lessee which as

stated above he himself paid on behalf of the lessor. The suit was filed on the strength of the assignment which the lessor executed conveying his

rights to recover the same from the lessee. The lessee committed default in payment of a further instalment which accrued due after the purchase of

the property by the plaintiff. In so far as that instalment was concerned he was the owner by that time and under the terms of the document having

stepped into the lessor's shoes, he was held entitled to recover that instalment which accrued due after his purchase. As regards the right to

recover the instalments which the lessee had failed to pay before the purchase by the plaintiff, the High Court held that it was a mere right to sue

and that such a right was not transferable under the law. As extracted on page 271 of the report, the High Court said this:

What was assigned by the defendant No. 2 to the plaintiff was his right to recover damages from the defendant No. 1 on account of the latter's

default in payment of the Government revenue and cesses. The right to recover damages is a mere right to sue and such a right cannot be

transferred under the law.

After setting out the above extract, the Judicial Committee referred to a relevant provision in the Transfer of Property Act, Section 6 (e) which is in

these terms:

A mere right to sue cannot be transferred.

The Judicial Committee held that what was assigned was not a mere right to sue but a claim for a definite sum of money which the lessee was

bound by his contract with Banerji to repay to him. This is what they say:

Their Lordships are clearly of opinion that this clause [Transfer of Property Act, Section 6 (e)] has no application to the facts of the present case.

In their Lordships' opinion what was assigned to the appellant was not a mere right to sue but a claim for a definite sum of money which the lessee

was bound by his contract with Banerji to repay to him. This would, their Lordships think, be an actionable claim to which Section 130 of the Act

would apply. The failure of the lessee to fulfil this obligation does not give rise to a claim of damages within the meaning of the clause in the lease on

which the High Court found, but to a claim for reimbursement of the precise sum which the landlord has disbursed to meet the obligation.

5. In the present case, respondents 2 and 3 the purchasers from the appellant had a claim for reimbursement of the precise sum which they had

paid as purchase money. This was a precise sum which they were entitled to get either on the view that the sale was void ab initio (the vendors

having had no title from the very beginning) or on the ground of an existing consideration which afterwards failed. In either Case, it is the purchase

money that respondents 2 and 3 had a right to recover. It may be that they had a right to recover some other amount under some other head of

claim but certainly they had the right to recover the purchase money which is a definite sum of money and the vendor the appellant was bound to

repay this sum to his vendees-respondents 2 and 3. As in the case before the Judicial Committee it must be taken that this was an implied term of

the contract of sale. In the case before the Judicial Committee, the lease deed

did not contain an express covenant to repay to the lessor the sum which he paid to the Government by way of Government revenue which the lessee had defaulted to pay. But evidently the Judicial Committee implied such a contract and that is what is referred to on page 271 as a claim for a definite sum of money which the lessee was bound by his contract with Banerji to repay to him. The contract which is here referred to is obviously an implied term of the contract, namely, the lease deed. On the same reasoning it must be held that there was in this case a contract to repay the purchase money between the vendor and the vendees. A right to claim enforcement of this contract would be in the words of the above decision an actionable claim to which Section 130 of the Transfer of Property Act applies. This being so, the right was clearly assignable. Having regard to the above decision of the Judicial Committee, I think it is not profitable to refer to the other cases cited by either party.

6. The second appeal fails and is therefore dismissed with costs.

7. (Leave to appeal refused.)