

(1971) 01 MAD CK 0003

In the Madras High Court

Case No : Civil Revision Petns. No's. 2293 and 2294 of 1965 and 579 of 1966

S. Gopalaratnam and others

APPELLANT

Vs

The Authorised Officer, Thanjavur

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Transfer of Property Act, 1882 — Section 40, 54
Trusts Act, 1882 — Section 91

Citation : AIR 1971 Mad 400

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : V.K. Thiruvengkatachari for P.M. Venugopalan, A. Sathar Sayeed and A. Ramanathan, for the Appellant; C. Krishnan for Asst. Govt. Pleader, for the Respondent

Judgement

Ramanujam, J.—This revision has been preferred against the order of the Land Tribunal in C. M. A. 50 of 1965 which was disposed of by

its common judgment dated 27-9-1965. The petitioner herein is a purchaser of certain lands of an extent of 11.52 acres from one Gopalaratnam

who is an executor appointed under the Will of his mother, Janaki Ammal dated 1-11-1959, by a sale deed dated 5-10-1961. Though the above

lands had been bequeathed to one Lalithammal, under the said Will, the testator the said Janaki Ammal had, even during her lifetime, entered into

an agreement to sell the lands to the petitioner herein. But before completing the sales as per the said agreement, she died. After her death the

executor appointed under her will executed the sale deed in favour of the petitioner on 5-10-1961 as per the agreement of sale entered into by the

deceased testator even during her lifetime. The said sale was held to be void u/s 22 of Madras Act 58 of 1961 by the Authorised Officer as

defeating the provisions of the Act. The Land Tribunal also upheld the said order of the Authorised Officer.

2. In this revision, Mr. V. K. Thiruvengkatachari, learned counsel for the petitioner, contends that though the transactions took place after the date

of the commencement of Madras Act 58 of 1961, and before the notified date, the transactions cannot be held to be void as the testator had not

intended to defeat the provisions of the Act in entering into the agreement of sale, as she had lands less than the ceiling limits. It is also contended

that the executor who executed the sale in pursuance of the agreement of sale entered into by the testator had no beneficial interest in the

properties left by the testator, that he is bound to carry out the directions of the testator and fulfil her obligations, and that in executing the sale deed

the executor had not acted on behalf of Lalithammal, the legatee under the will nor on his own behalf. It is also pointed out that neither the executor

nor the legatee came to own lands on the death of the testator and that the transfer made by the executor was done by him only to carry out the

obligations incurred by the testator before her death.

3. Reference has been made to the decision in *Paparaju Veeraraghavayya Vs. Kilaru Kamala Devi and Others*, , where Venkatasubba Rao J. held

that a purchase made subsequent to the attachment but in pursuance of an agreement to sell entered into prior to the attachment prevails over the

attachment. The reasoning given by the learned Judge for that view is that a purchaser under a contract of sale of land is entitled to the benefit of an

obligation arising out of the contract, which is a well defined right, which though not amounting to an interest in immovable property is annexed, in

the words of Section 40 of the Transfer of Property Act and Section 91 of the Trusts Act, to the ownership of such property, and that

notwithstanding Section 54 of the Transfer of Property Act, which says that a contract of sale does not create an interest in land, by virtue of

Section 40 of the Transfer of Property Act, and Section 91 of the Trusts Act a contract of sale creates an obligation of a fiduciary character and is

in the nature of a trust. Reference was also made to the decision of a Division Bench of this court in *Veerappa Thevar and Others Vs. C.S.*

Venkatrama Ayyar, which also dealt with a case of attachment of properties in respect of which there was an earlier agreement to sell, and the

Bench had agreed with the view of Venkatasubba Rao J. in the earlier case and expressed the view that an agreement to sell created an obligation

to convey the property and the later attachment will not override the conveyance made later in performance of that obligation, and that the

attachment in such cases will hold good only in respect of such right as the vendor had in the property at the time of attachment, that is, a right to

recover the unpaid balance of the purchase money, if any. Reliance was also placed on the decision of the Supreme Court in *The Member, Board*

of Revenue Vs. Arthur Paul Benthall, Wherein it has been expressed that an executor or an administrator represents the estate of the deceased,

whose persona is deemed to continue in him for purpose of administration.

4. Basing himself on the above decisions the learned counsel for the petitioner contends that the said Gopalaratnam while acting as an executor

represents the estate of the testator whose persona is deemed to continue in him for the purpose of administration, that he has not executed the

sales either on his own behalf or on behalf of the legatee, and that as such his transfers as executor in pursuance of the agreements of sale executed

by the testator cannot be brought u/s 22 on the basis that the executor has effected the transfer on behalf of the legatee. Williams on Executors and

Administrators 14th Edn. at page 720, paragraph 1109 has stated:

A binding contract for the sale of the property entered into after the date of the Will, but not completed until after the testator's death has the like

effect to a sale in bringing about an ademption. If a testator having specifically bequeathed property by his will, then creates an option to purchase

the property, the exercise of the option after the testator's death adeems the legacy.

In my view this is the true statement of the law. When the testator in this case had created an option to purchase the property in favour of third

parties subsequent to the execution of the Will, and when the option has been exercised by the purchasers after the testator's death, the legacy in

favour of the executor's wife is adeemed. Chapter 16 of the Indian Succession Act deals with ademption of legacies and Section 152 states that

the legacy is said to have been adeemed if it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the

will. In this case the testator has entered into a binding contract agreement with

the purchaser for the sale of the property thus creating an obligation in their favour which was in the nature of a trust. Williams on Executors and Administrators, 14th Edn. at page 264 has again stated as follows:

The interest which an executor or administrator has in the property of the deceased is very different from the absolute and ordinary interest which every one has in his own property; for an executor or administrator has his estate as such in *auteur droit* namely, as the minister or dispenser of the property of the dead.

It, therefore, seems to be clear that so far as the legacy in favour of the executor's wife is concerned, it stands *adeemed* and so far as the executor is concerned, he has no beneficial interest in the properties as only a legal estate that vests in him. Hence, on a due consideration of the matter I feel

that the transfer made by the executor in pursuance of the agreement to sell executed by the testator will not be hit by Section 22 of the Act.

5. Further, the testator cannot have intended to defeat the provisions of the Act by entering into agreements of sale, for she held lands well within

the ceiling limit and it is not possible to impute an intention on her part to defeat the provisions of the Act. It may be that she intended to sell away

the properties, instead of leaving it to her son or to her daughter-in-law so that their holding exceeds the ceiling limit either by inheritance or

bequest from, her. But such an intention on the part of the testator cannot be said to defeat the provisions of the Act u/s 22 . I therefore hold that

the alienations made by the executor in this case cannot be said to be void. I therefore set aside the orders of the authorities below and allow the

civil revision petition. No costs.

6. C. R. P. Nos. 2293 and 2294 of 1965 -- in view of the above decision in C. R. P. No. 579 of 1966 these civil revisions are also allowed.

There will be no order as to costs.