Privy Council Appeal No. 28 *of* 1945

Sri Raja Velugoti Sarvagna Kumara Krishna Yachendra Bahadur Garu and others - - - - - - - - *Appellants*

v.

Sri Raja Sobhanadri Apparao Bahadur Zamindar Garu and another - - - - - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST MARCH, 1949

Present at the Hearing:

LORD MACDERMOTT
LORD REID
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras dated the 17th September, 1943, which varied a judgment and decree of the court of the Subordinate Judge of Nellore dated the 31st October, 1940.

The first question for determination is whether under a contract of indemnity dated the 25th August, 1910, the appellants are liable to indemnify the first respondent for loss sustained by him in connection with a certain purchase. In the event of the appellants being held not liable the first respondent desires to contend that the second respondent is liable to make good to him the whole or part of his loss.

The relevant facts are as follows :—

One Inuganti Venkata Rama Rao, the son of the second respondent (who will be referred to hereafter as " the son "), obtained from his maternal grandfather, by way of gift, a one-fouth share in the Mokhasa Village of Somavaram. During his minority, the second respondent (who will be referred to generally as " the vendor "), as his guardian, agreed to sell the said property to the father of the first respondent for Rs.27,302. The purchaser was unwilling to purchase the property from the vendor as guardian of a minor without an indemnity. Accordingly the Maharaja of Venkatagiri, the grandfather of the appellants, who was a close relation of the son, undertook to indemnify the purchaser from all loss he might suffer if the son, after attaining majority, should dispute the alienation. Such indemnity was contained in a written bond dated the 25th August, 1910. The question raised in the appeal depends in the main on the construction of such bond, the precise terms of which will be discussed later.

The term " the purchaser " in this judgment will include the father of the first respondent and his successors in interest at the relevant dates and the term " the surety " will include the Maharaja of Venkatagiri and his successors at the relevant dates.

On the 14th October, 1910, the vendor executed a sale deed conveying the said one-fourth share in the village of Somavaram to the purchaser who paid the purchase money of Rs.27,302. One square yard of vacant land in the village of Vundur, which is within the sub-registration District of Samalkot, was included in the sale deed with a view to have the document registered at Samalkot, which is near the place of residence of the vendor, instead of at Tiruvur where the Somavaram property was situated. The document was registered at Samalkot on the 14th February, 1911.

In 1922, which was some years after the death of the Maharaja of Venkatagiri and more than three years after the son had attained his majority, the son instituted a suit in the court of the Subordinate Judge of Bezwada against the purchaser (defendants 1 and 2). He sought to recover possession of the one-fourth share in the Mokhasa village of Somavaram together with mesne profits on the ground that the said alienation by the vendor was not binding on him for want of legal necessity. He also pleaded that the sale deed was void and inoperative as the registration of the document at Samalkot was a fraud on the law relating to registration of documents because the plot of one square yard of land which was included in the sale deed was not intended to be conveyed but was included solely with the object of giving jurisdiction to the sub-registrar of Samalkot to register the document at Samalkot. The vendor was also impleaded in the suit as the fourth defendant and the surety was impleaded as the third defendant.

The said suit was tried by the Subordinate Judge of Bezwada who on the 20th September, 1924, held that the sale was not for legal necessity and was not binding on the son, but as he had failed to institute the suit within three years from the date of his attaining majority he was not entitled to succeed on that ground. The learned Judge, however, decreed the suit on the alternative ground that the sale deed was void and inoperative as it was not registered according to law and the purchaser acquired no title to the property.

The purchaser appealed to the High Court at Madras against the said decision of the Subordinate Judge. On the 20th August, 1930, the High Court reversed the decision of the Subordinate Judge and held that the registration of the sale deed was valid, and accordingly dismissed the suit. The son appealed to His Majesty in Council, and on the 13th January, 1936, the Board reversed the decision of the High Court, and restored the decree of the Subordinate Judge with a slight modification as to the amount of mesne profits. It was noted in the judgment of the Board that it was common ground between the parties that if the conveyance of the 14th October, 1910, was effective the suit must fail ; for if it were necessary for the son to ask that the conveyance should be set aside as not binding on him, his suit was out of time ; but if it could be regarded as a nullity there would be no case of limitation. The Board held that there was no intention either to sell or buy the yard of land in Samalkot district, and its inclusion in the sale was a mere device to evade the Registration Act. Consequently there was no effective registration of the conveyance which was no obstacle to the son's suit for possession.

In pursuance of the order of the Board, the son in December, 1937, recovered possession of the properties sold from the purchaser together with mesne profits and costs. On the 14th February, 1938, satisfaction of the decree was entered.

On the 30th January, 1939, the purchaser (the present first respondent) instituted the present suit in the court of the Subordinate Judge, Nellore, to enforce the indemnity bond, and to recover a sum of Rs.53,737-5-10 from the surety (the present appellants) as the representatives of the Maharaja of Venkatagiri. He impleaded the present appellants as defendants 1-3 and the vendor (present respondent No. 2) as defendant 4. In the alternative, he claimed to recover the said sum from the vendor personally and from his family properties. His claim was made up of

the following items :—Rs. 27,302, the purchase money, with Rs.1,774-10-1 interest thereon, Rs.11,400, mesne profits paid by him, Rs.6,884, the costs paid by him in the previous litigation and Rs.6,376 the costs incurred by him in that litigation and certain sums as interest on these items.

On the 31st October, 1941, the Subordinate Judge delivered judgment. He held that the indemnity bond was true and valid, that the defendants 1 to 3 (the surety) were not liable to refund the sale consideration of Rs.27,302/- as the conditions of the bond as to delivery of possession had not been fulfilled, but were liable to pay to the plaintiff the *mesne* profits and costs paid by him to the son, that the suit was not barred by limitation, and that the fourth defendant (the vendor) was liable to pay back the sale money which had been paid to him by the plaintiff's father. In the result, he gave a decree for a sum of Rs.24,660.11.9 against defendants 1 to 3 (appellants) and for Rs.29,076.10.1 against the fourth defendant (second respondent). A decree dated the 31st October, 1940, was accordingly passed.

Against the said decree of the Subordinate Judge defendants 1 to 3 appealed to the High Court at Madras by appeal 260 of 1941, disputing their liability for the amount decreed against them. The plaintiff filed a memorandum of cross-objections to the decree in respect of the claim disallowed as against defendants 1 to 3. The fourth defendant filed appeal No. 267 of 1941 disputing his liability for the amount decreed against him. The appeals and the memorandum of cross-objections were heard together by the High Court (Krishnaswami Ayyangar and Horwill JJ.) and on the 17th September, 1943, Horwill J. delivered the judgment of the Court in all the matters. The learned Judges held, disagreeing with the Subordinate Judge, that defendants 1 to 3 were liable for the sale money as well as for the sum for which the Subordinate Judge had held them liable and passed a decree against them for the full amount claimed. They held that the plaintiff had fulfilled the terms of the indemnity bond, and accordingly they dismissed the appeal of the defendants 1 to 3 (appellants) and allowed the cross-objections of the plaintiff (the first respondent). In the appeal preferred by the fourth defendant (second respondent) they held that the fourth defendant was the guardian of the son at the time the properties were sold, that the money was received by him and that as he did not prove that it was applied for the benefit of the son, he was liable to refund the amount to the plaintiff under section 65 of the Indian Contract Act; and that there was no proof that the plaintiff's father committed any fraud on the Registration Law as all the parties acted in good faith and in the honest belief, as the law then stood, that there was no harm in including one square yard of site with a view to facilitate the registration of the document at Samalkot. They held further that the claim against the fourth defendant (the second respondent) was not barred by limitation, but as such claim was only in the alternative and as the claim for the full amount was allowed against the appellants the High Court allowed the appeal of the fourth defendant and dismissed the suit as against him.

One decree in appeals 260 and 267 of 1941 was passed on the 17th September, 1943, by which by clause 1 the present appellants were ordered to pay to the present first respondent the sum of Rs.53,737.5.10 with interest and by clause 3 to pay to him certain costs; and by clause 2 the suit was dismissed as against the present respondent No. 2, who by clause 4 was ordered to pay the costs of present respondent No. 1.

The rights of the first respondent as purchaser against the appellants as sureties depend in the first place upon the construction of the indemnity bond of the 25th August, 1910. The bond was expressed to be made by the Maharaja of Venkatagiri in favour of the father of the first respondent and was in the following terms:—

> "As regards lands, house-sites and tiled houses pertaining to the one-fourth share in Somavaram Mokhasa village, which were made to pass, under a settlement deed, to minor Inuganti Venkatarama

Row Garu, daughter's son of Rajah Chelikani Venkatagopala Row Garu, one of the sharers of Somavaram *Sarwa Mokhasa* (village), attached to Tiruvur Sub-Registration District, Kistna District, the price settled for your purchasing the same, as mentioned in the said settlement deed, from the minor's natural father and guardian Inuganti Sooryaprakasa Row Garu, for the benefit of the minor, is Rs.27,302.0.0, in words, twenty-seven thousand three hundred and two rupees. You may pay the said amount to the said guardian, Inuganti Sooryaprakasa Row Garu, for the said minor and get a sale deed executed.

We (I) hereby agree that, if, soon after the minor ceases to be a minor and becomes a major, a ratification Khararnama (agreement) is not caused to be executed and delivered to you and if, for any reason, without consenting to the said sale, the minor Inuganti Venkatarama Row Garu raises disputes, and loss is sustained by you thereby and if you deliver possession to us (me) of the ¼ share in the said Somavaram village, and the tiled houses, house-sites and all which shall have been sold to you, we ourselves (I myself) shall, as soon as the same are passed to us (me) without having anything to do with the minor or his natural father and guardian, Inuganti Sooryaprakasa Row Garu and without raising any objection, refund the sum of Rs.27,302.0.0, in words, twenty-seven thousand three hundred and two rupees, which you shall have given towards the sale consideration, and that, if, as regards the past profits for the said share, the minor should file a suit against you and obtain a decree, we ourselves (I myself) shall, after you transfer to us (me) all the accounts that you may obtain in connection with the said past profits for taking steps against the said minor, in respect of the losses that may be sustained by you thereby, pay the decree amount relating to the said past profits. This is the indemnity bond caused to be written by Ammanamanchi Venkata Narasimhayya, in Venkatagiri, and delivered with our (my) consent."

The risks incurred by anyone purchasing the property of a Hindu minor from his guardian are well known to those conversant with Hindu law. The minor son at any time within three years after attaining his majority may repudiate the sale on the ground that it was not for necessity or for the benefit of the estate and if he does so the burden of proving that the sale was justified, or that the purchaser made all proper enquiries, lies upon the purchaser, who may find such burden difficult to discharge. The first contention of the appellants is that the indemnity bond was directed to this risk, and not to the risk of loss occasioned by failure to register the sale deed ; a loss arising, not from any action of the minor, but from the negligence of the purchaser himself. Their Lordships think that this argument must prevail and that the whole tenour of the bond shows that it was directed solely to indemnifying the purchaser against the risk involved in buying from the guardian of a minor and was not intended to be a general guarantee of title. The bond recites that the proposed sale is from the minor's father and guardian at the price specified and states:—

> "You may pay the said amount to the said guardian for the said minor and get a sale deed executed."

This stipulation appears to their Lordships to be the foundation of the obligation undertaken by the surety and they think that the words "get a sale deed executed" postulate an effective sale deed conferring a title which could be transferred to the surety, and not one of no force through lack of registration. Again, the obligation of the bond is conditional, amongst other things, on the minor son, soon after becoming a major, not causing a ratification agreement to be executed and delivered to the surety. This points to the transaction, the subject of indemnity, being one capable of ratification by the minor. The minor on attaining majority could ratify a sale deed made by his guardian on his behalf, but he could not ratify a sale deed inoperative through lack of registration. He might, no doubt, if so minded, execute a fresh sale deed but

that would not be ratification. There is nothing in the bond to suggest that it covers loss arising through failure of the purchaser to register the sale deed according to law.

As, in their Lordships' opinion, the loss suffered by the first respondent is not covered by the indemnity bond, it is not necessary to determine the validity of further defences raised by the appellants, namely that their liability under the bond was discharged by alteration in the property to be included in the sale by the addition of the yard of land in Samalkot District, and also by the failure of the purchaser to effect proper registration of the sale deed, an argument which the appellants supported by reference to the case of *Wulff* v. *Jay*, L.R. 7 Q.B. 756. Nor need their Lordships consider the further argument that there was failure to comply with the conditions of the bond relating to handing over possession of the property sold to the surety which discharged him from liability to repay the purchase money as held by the Subordinate Judge.

In the opinion of their Lordships therefore the appeal of the appellants must succeed, and the question then arises whether respondent No. 1 can claim to recover from respondent No. 2 or his representative the whole or any part of the loss sustained by him. In their Lordships' view no question between respondent No. 1 and respondent No. 2 is before the Board in this appeal. As already noted there were two appeals to the High Court, No. 260 by the appellants and No. 267 by the second respondent. The High Court passed only one decree in both appeals, and had there been two separate decrees it is clear that respondent No. 1 would have had to appeal against the decree in appeal No. 267, in which he alone was directly concerned. But the composite decree passed by the High Court is easily divisible. It is apparent from the terms of the decree that clauses 1 and 3 were passed in appeal No. 260 and clauses 2 and 4 in appeal No. 267. The rights of the parties cannot be affected by the act of the High Court in including in a single decree decrees passed in two separate appeals. In their petition dated the 6th March, 1944, to the High Court for leave to appeal to the Privy Council the appellants sought leave to appeal only against the decree in appeal No. 260, and the order of the court granting leave was confined to that appeal. Nor have the appellants raised any claim against respondent No. 2. In these circumstances respondent No. 1 ought to have presented a petition to His Majesty praying for leave to appeal against that part of the decree of the High Court passed in appeal No. 267 which dismissed the suit of respondent No. 1 against respondent No. 2. That course is not now open to respondent No. 1 for two reasons. In the first place respondent No. 2 has died, so their Lordships are informed, since the hearing of the appeal commenced ; and in the second place the jurisdiction of the Board to hear an appeal by respondent No. 1 against respondent No. 2 or his representative at the present time would seem to be taken away by the Federal Court (Enlargement of Jurisdiction) Act, 1947. These matters, however, do not affect the questions arising between the appellants and respondent No. 1, and this judgment is confined to those questions. Respondent No. 1 will be free to take such action as he may be advised against so much of the said decree of the High Court dated the 17th September, 1943, as was granted in appeal No. 267.

Their Lordships will therefore humbly advise His Majesty that this appeal be allowed, that clauses 1 and 3 of the decree of the High Court dated the 17th September, 1943, be set aside and that the decree of the Subordinate Judge of Nellore dated the 31st October, 1940, so far as it holds the present appellants liable for a sum of Rs.24,660.11.9 and interest be also set aside and that the suit of the first respondent against the appellants be dismissed. The first respondent must pay the costs of the appellants throughout.

(64420) Wt. 8084—42 200 4/49 D.L. G 338

In the Privy Council

SRI RAJA VELUGOTI SARVAGNA KUMARA KRISHNA YACHENDRA BAHADUR GARU AND OTHERS

v.

SRI RAJA SOBHANADRI APPARAO BAHADUR ZAMINDAR GARU AND ANOTHER

DELIVERED BY SIR JOHN BEAUMONT

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