Privy Council Appeal No. 20 of 1940

Cecily Harriett Matilda Peiris - - - - *Appellant*

v.

R. M. Sellamuttu Pillai (deceased) and another - - *Respondents*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH NOVEMBER, 1940

Present at the Hearing:
LORD ATKIN.
LORD THANKERTON.
SIR GEORGE RANKIN.
[*Delivered by* LORD ATKIN.]

This is an appeal from the Supreme Court of Ceylon confirming the District Court of Colombo. The action was brought by the present appellant, the wife of a Mr. Peiris who carried on business as a broker at Colombo. The claim made by her was that there being a property for sale, her husband went to the present respondents and arranged with them that they should purchase the property for his wife because his financial circumstances were such that it was inconvenient that the property should stand in his name, and arranged that they should secure a mortgage on the property; that the whole transaction was carried out in her name; she was the principal and the transaction being carried out in her name, she would be entitled to have the property declared to be hers. That case which was put forward, though not it seems in the first instance, alternated with the case that all these transactions went through for her, that by agreement made between her husband and the two respondents, the two respondents having undertaken the liability for a loan and having made the purchase in their own names, agreed that she should have one-fourth of the property—the money that represented her share of the purchase price being paid off out of the profits of the whole property which would be received, and were received, by the defendants. The simple answer that is made by the respondents and was accepted by the Judge of first instance is that that transaction in that form never took place. It seems to have been suggested at one time that the husband should receive from this transaction one-fourth of the property that was bought. No agreement was eventually arrived at. There are documents which indicate that Mr. Peiris, the husband of the plaintiff, had suggested to the solicitors for the defendants

that they had agreed to pay him a one-fourth share of the property in consideration for his services in introducing the transaction to them. A draft memorandum came into existence upon that footing, but there was no concluded agreement and eventually it is quite plain that any suggestion that Mr. or Mrs. Peiris should get one-fourth of the property fell through for the reason that neither Mr. nor Mrs. Peiris was prepared to undertake the responsibility for one-fourth of the losses on the working of the estate, if there should be losses. The transaction seems quite plain when one considers it. At that time there was not much prosperity attaching to tea plantations in Ceylon. Eventually the position got much better and if this arrangement had been carried through Mr. and Mrs. Peiris would have been in a position to say: "Well, the profits have been sufficient to meet this one-fourth of the purchase price." In the circumstances it is almost certain that neither Mr. nor Mrs Peiris would have had any right or power to claim that one-fourth share.

However, the position here is that the Judge has rejected entirely the story told by Mr. and Mrs. Peiris and he believes the story told by Mr. Weerasooriya, who is a proctor of repute, to the effect that he never was made aware of the transaction as narrated by Mr. Peiris and that there never was a concluded agreement.

In those circumstances it seems plain that the documents must stand as they are. The defendants have taken the property themselves; they did not in fact buy it for Mrs. Peiris or for Mr. Peiris and there was no agreement by which they undertook to give any share of the property which they had bought for themselves either to Mr. Peiris or Mrs. Peiris.

Those are the findings of the District Judge and they are findings of fact. On an appeal to the Supreme Court the Supreme Court accepted the findings of fact of the learned Judge and they agreed with his reasoning. There are, therefore, concurrent findings which prevent their Lordships from interfering with those findings of fact. No doubt the rule as to concurrent findings is not so rigid that it might not be departed from if such a state of things existed as facts appearing from some undisputed document which are completely destructive of the findings of fact by the learned Judge, but nothing of that kind appears here. In those circumstances it is impossible for their Lordships to interfere with the judgments.

The result is that the appeal must be dismissed and their Lordships will humbly advise His Majesty accordingly.

The appellant must pay the costs. Their Lordships see no reason why there should be more than one set of costs in the circumstances because substantially the issues seem to be the same as regards both the respondents.

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In the Privy Council

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DELIVERED BY LORD ATKIN

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