

4/19/62

No. 13 of 1961.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF THE
FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :-

P.N. CT. GANAPATHY CHETTIAR

Appellant

68226

PR.SP. PERIAKARUPPAN CHETTIAR

and

P.N. ST. NALLAKARUPPAN CHETTIAR

Respondents

CASE FOR THE APPELLANT

Record.

1. This is a consolidated appeal from two judgments of the Supreme Court of the Federation of Malaya in the Court of Appeal at Kuala Lumpur. The first, dated the 6th day of October 1960 reversed the decision of Adams, J. given at Kuala Lumpur on the 20th day of June 1960 dismissing a motion by the Respondents herein and the second dated the 12th day of December 1960 dismissing a motion by the Appellant herein for review and variation of the judgment of the 6th day of October 1960.

Doc.20 p.39
Doc.15 p.25
Doc.28 p.53
Doc.20 p.39

2. The Appellant is by virtue of Letters of Administration issued out of the High Court at Kuala Lumpur on the 30th day of April 1957 the administrator of the estate of one P.N. ST. Sithambaram Chettiar who was prior to and at the time of his death on the 8th day of March 1954, intestate, a partner in a money lending firm called N.P.R. At the time of his death the deceased had registered in his name an undivided 19/24 share in each of the lands held under Selangor Grants Nos. 5558 and 6468 for Lots Nos. 990 and 1308 in the Mukim of Cheras in the District of Ulu Langat containing a total area of 153 acres 3 roods 20 poles. This undivided share was a partnership asset and the deceased was registered as a partner and not as beneficial owner of the said lands.

Doc. 1 p. 1
Doc. 1 p.3,
11. 7-10.

Doc.20 p.39
11. 20-24

3. After the death of the deceased the Appellant caused himself to be registered as proprietor of this land "as representative" by virtue of section 155 of the Land Code of the Federation of Malaya.

Ex.D."A"(1)
p.62

4. In or about September 1959 it was desired to sell the said land and the partners in the Firm of N.P.R. resident in India gave their authority by a letter dated the 7th day of October 1959 to the sale of the said lands at any price in excess of \$ 850/- an acre subject to the consent and approval of PR. SP. Periakaruppan Chettiar (the first Respondent herein) the other partner then resident in Kajang in the Federation of Malaya.

Ex.D."B"(1)
p.69

5. Having on or about the 20th day of October 1959 obtained the oral consent of the first Respondent the Appellant entered into an agreement dated the 31st day of March 1960 with one Low Hock Peh and others to sell the said land at a price of \$ 900/- an acre subject to approval of the sale by the Supreme Court at Kuala Lumpur.

Doc. 4 p. 9

6. The Appellant took out on the 20th day of April 1960 an Originating Summons purporting to be issued in the matter of Petition No. 275 of 1954 which was his original application for administration. This Originating Summons which was returnable on the 25th day of April 1960 purported to be ex parte and was not served on anybody although the first Respondent and the Solicitors for one Sockalingham Chettiar the manager of the partnership firm were informed in writing that it had been issued.

In Doc. 10
p.14, 11.21-27

Ex. D.7. p.73

Doc. 9 p.12

7. On the hearing of the Originating Summons on the 25th day of April 1960 it was ordered by Adams J. that the Appellant be at liberty to sell the said land to Low Hock Peh and others at a price of \$ 900/- an acre.

Doc.12 p.18

8. On the 23rd day of May 1960 before the said sale had been completed, the present Respondents filed a Notice of Motion for an Order to set aside the Order made on the 25th day of April 1960 or that it be varied to provide liberty for the Appellant to sell the said land at a price of not less than \$ 1,000/- an acre on the grounds that the first Respondent had not been served with the said Originating Summons, had not consented to the sale at \$ 900/- an acre which was alleged to be below the true value of the land and had a prospective purchaser at \$ 1,000/- an acre and that the second

Doc.11 p.16

Respondent who is a brother of the Appellant and son of the deceased and was beneficially entitled to a share in the deceased's estate, had not been served with the Originating Summons.

9. On the 20th day of June 1960 Adams J. dismissed the application in the Notice of Motion on the grounds that the second Respondent had no immediate right or interest in the said land at all in that the land was partnership property and not part of the estate of the deceased and that although the first Respondent should technically have been served with the Originating Summons under order 55 Rule 5(a) he was well aware of what was going on and had given his consent verbally to the sale at a price of ~~£~~ 900/- an acre, and that the price was a fair one and this was not a proper case to interfere with the previous Order.

Doc.15 p.25
Doc.16 p.26

10. The Respondents appealed to the Court of Appeal on the grounds inter alia that Adams J. had been wrong in holding that the second Respondent had not an immediate right or interest in the land and need not have been served with Originating Summons and that in the circumstances the learned Judge had been wrong in exercising his discretion not to interfere with his previous Order.

Doc.17 p.31
Doc.18 p.32

11. In a Judgment dated the 6th day of October 1960 by Thomson C.J. (in which Hill J.A., and Ong, J. concurred) allowing the appeal it was held that

Doc.20 p.39

"If Periakaruppan" (the first Respondent) "stood alone his case would require very careful scrutiny. There has to be some finality in human affairs and once the Court has approved a sale at a certain price or an application made in good faith by an administrator in my opinion it should be very chary indeed to upset that arrangement simply on the ground that an offer of a better price could have been had.

in Doc. 20
p.41,
11. 9-16

But the case of P.N. ST. Nallakruppan" (the second Respondent), "the beneficiary, warrants much more careful consideration."

It was further held that the second Respondent was a person whose "rights or interests" were "sought to be affected" within the meaning of Order 55 Rule 5A(a) and therefore had a right to be served with the said Originating Summons. The Court

in Doc. 20
p.42,
11.31-35

allowed the appeal, set aside the Order of the 25th day of April 1960 as a nullity and ordered the Appellant to pay the costs personally.

- Doc. 23 p.46 12. By a Notice of Motion dated the 11th day of October 1960 the Appellant sought to move the Court for an Order that the Judgment of the 6th day of October 1960 be reviewed and varied on the grounds that owing to the course the proceedings took before the Court of Appeal the said Court had not appreciated that although the second Respondent had not been served with the Originating Summons he had in fact been present before Adams J. on the hearing thereof and had merely argued that upon the proceeds of sale of the land being realised the Appellant should not be permitted to receive the share due to the Estate without reference to him.
- Doc. 22 p.45
- Doc. 28 p.53 13. This Motion was dismissed on the 12th day of December 1960 without a formal judgment and the Appellant was ordered to pay the costs personally.
- Doc. 29 p.54 14. On the 12th day of December 1960 the Appellant was granted conditional leave to appeal to the Yang di-Pertuan Agong from the Judgment of the Court of Appeal dated the 6th day of October 1960 and on the 17th day of April 1961 this leave was made final.
- Doc. 33 p.58
- Doc. 32 p.57 15. On the 7th day of February 1961 the Appellant was granted conditional leave to appeal to the Yang di-Pertuan Agong from the decision of the Court of Appeal dated the 12th day of December 1960 dismissing the Motion dated the 11th day of October 1960 and it was ordered that that appeal be consolidated with the appeal for which conditional leave had been granted on the 12th day of December 1960. This leave conditionally granted on the 7th day of February 1961 was made final on the 17th day of April 1961.
- Doc. 33 p.58

16. The Appellant humbly submits that this appeal should be allowed for the following among other

R E A S O N S

1. The second Respondent was not a person whose "rights or interests" were "sought to be affected" within the meaning of Order 55 r. 5A(a) and therefore had no right to be served with the said Originating Summons.

2. This was not a case where it was proper to interfere with the original Order.

3. Alternatively, the Court of Appeal were wrong in not reviewing and varying the Order of the 6th day of October 1960 because the presence of the second Respondent at the hearing of the Originating Summons and his failure to object to the proposed sale waived any objection to the fact that he was not served with the Originating Summons.

Thomas O. Kellock.