

1931

*Present : Akbar J.*VALLIPURAM *v.* MANIKAM *et al.*

97—C. R. Point Pedro, 24,792.

Execution—Conveyance of property subject to right of repurchase—Grantor's right under conveyance—Liability to seizure—Civil Procedure Code. s. 218 (k).

Where a conveyance of property was subject to the condition that the vendor was entitled to repurchase the property upon payment of a certain sum within a specified time,—

Held, the vendor's right was liable to seizure in execution and that it did not fall within the exception created by section 218 (k) of the Civil Procedure Code.

A PPEAL from a judgment of the Commissioner of Requests, Point Pedro.

Tisseveresinghe, for plaintiff, appellant.

Navaratnam, for second defendant, respondent.

November 20, 1931. AKBAR J.—

This is an action under section 247 of the Civil Procedure Code. The plaintiff-appellant as judgment-creditor of the first defendant-respondent obtained a decree against him in Court of Requests, Point Pedro, No. 24,215, on March 27, 1930. In this action the plaintiff seeks to set aside deed No. 21,554 dated June 5, 1930, whereby the first respondent renounced in favour of his sister, the second defendant-respondent, in consideration of a sum of Rs. 250 (which consideration was not paid in the presence of the notary) his right to obtain in terms of deed No. 1,937 dated April 10, 1929, a reconveyance of the land which the first defendant sold on that deed to the second defendant for a sum of Rs. 250 which was paid in the presence of the notary. Four issues were framed in this case, namely :—(1) Is the accrual of first defendant's right to get a retransfer contingent on payment of money? (2) Is the said right personal? (3) Was consideration paid? and (4) Was the deed of renunciation (No. 21,554 of June 5, 1930) obtained in fraud of creditors or to consolidate second defendant's property?

No evidence was led and the learned Commissioner decided the case on the first issue, namely, that the right created by deed No. 1,937 of April 10, 1929 (marked 2 D1 and hereinafter referred to as such) was a contingent right and therefore was not liable to seizure under section 218 (k) of the Civil Procedure Code. A very long argument was raised by counsel on both sides in this appeal but it is not, however, necessary for me to refer to all the points of law urged by counsel, because in my opinion the interest created by 2 D1 in favour of the first defendant did not fall under paragraph (k) of section 218 of the Civil Procedure Code. The deed 2 D1 is signed by the first defendant as well as the second defendant. It purports to be a conveyance in consideration of Rs. 250 by the first defendant in favour of his sister, the second defendant, of a certain property, subject to a certain condition. The condition is thus stated: "I do hereby declare that this property belongs to me by virtue of deed of transfer in my favour No. 6,155 dated July 3, 1924, and attested by Kana Supramaniam Notary and by possession, that when I ever within the term of three years from the date hereof pay the said consideration of rupees two hundred and fifty with interest thereon at the rate of sixteen per cent. per annum, then she shall have to execute a legal transfer deed in my favour and if I fail to pay the said principal and interest within the said three years and get a deed executed in my favour, then this deed should, from the day after the expiration of the said three years, be considered as a deed without any bindings that I will deliver this day the possession of the said land unto her and, that the said deed has been delivered herewith.

"I, the said Rasammah, do hereby declare that I have purchased the said land subject to the said bindings, with consent of my husband the said Kanapathipillai Vallipuram".

It is clear that the parties valued this option to purchase at Rs. 250 as evidenced by the later deed 21,554 of June 5, 1930. Paragraph (k) of section 218 states that "An expectancy of succession by survivorship or other merely contingent or possible right of interest" is not liable to seizure. I think paragraph (k) refers to a right which is not yet vested in the judgment-debtor and which may never vest. But in this case by deed 2 D1 there is a definite contract whereby the second defendant agreed to retransfer the property on payment of a certain specified sum. I do not think it can be urged that under 2 D1 no right had accrued to the first defendant to repurchase this property. Under that deed second defendant bound herself to reconvey the property upon payment of a specified sum within three years, and that this is a valuable right is proved by the action of the second defendant-respondent herself when she purported to buy back this option by the later deed for the sum of Rs. 250. The learned Commissioner's reasons therefore seem to me to be wrong and the case should be sent back for a retrial. Moreover, I am of opinion that this right to repurchase was not personal to the first defendant but passed to his heirs and his assignees and that it could be seized by his creditors. I therefore answer both the issues (1) and (2) in the negative and send the case back for trial on the issues Nos. (3) and (4)

and a further issue No. (5) which will be as follows:—Did the plaintiff seize the interest of the first defendant in deed No. 1,937 dated April 10, 1929, in the manner required by law?

The judgment and decree are set aside and the case sent back for trial on issues (3), (4), and (5). The appellant will be entitled to the costs of this appeal but the costs hitherto incurred in the lower Court will abide the result of the further trial.

Set aside.
