

Act, under which the sale of opium was only permitted subject to such conditions as the Commissioner might, from time to time, prescribe. Therefore, the sale of opium by partners, who could not enter into partnership without contravening the condition prescribed, would violate the provisions of the Opium Act. We set aside the decree of the District Judge upon the preliminary issue, and direct the Judge of the lower Court to dispose of the case on the merits. The respondent must pay the costs in this Court and the lower appellate Court upon the preliminary issue.

*Decree reversed.*

J. G. R.

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ORIGINAL CIVIL.

*Before Mr. Justice Beaman.*

GANGABAI WIDOW *v.* SONABAI COWASJI GHEEVALA AND ANOTHER.<sup>o</sup>

1915.

*Vendor and purchaser—Conveyance of property by an administratrix having a beneficial interest therein—No words of limitation in the agreement to convey specifying whether it was qua administratrix or qua beneficial owner—Principle to be applied in ascertaining in what capacity the administratrix acted.*

December 10.

Where a person has two estates, one larger and the other smaller, and purports to convey the entire property without any words of limitation, he must be taken to be conveying the highest estate he has; that is to say, if an executor having a one-third personal beneficial interest in the estate purports to convey the whole of it without qualification or limitation, he must be taken to be conveying, in his character as executor and not in that of one having a beneficial interest only in a fraction of the whole estate purported to be conveyed.

*In re Venn & Furze's contract*<sup>(1)</sup> followed.

No distinction can be maintained in principle between actual conveyances and agreements to convey for the purposes of applying this general rule.

<sup>o</sup>O. C. J. Suit No. 397 of 1914.

<sup>(1)</sup> [1894] 2 Ch. 101.

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THE plaintiff filed this suit praying for specific performance of an agreement to sell certain property in Sheikh Memon Street, alleged to have been entered into on the 18th of January 1914 between the plaintiff and the defendant who was the administratrix of her deceased father. The plaintiff further prayed for rectification, if necessary, of the aforesaid agreement by the insertion therein of words to show that the defendant had entered into the agreement in her capacity as administratrix and not in her private capacity as having a beneficial interest to the extent of  $\frac{9}{16}$ th in the said property. The defendant in her written statement alleged *inter alia*, that the agreement was not binding on her, because her signature to it had been obtained by misrepresentation and fraud, and further that she was never asked to, neither did she enter into the said agreement as administratrix of her deceased father's estate. The material portion of the agreement sued on being Exhibit E in the case read as follows:—

"This bargain paper is made this day the 18th of January in the year 1914 between Bai Sonabai Cawasji Nassarwanji Gheewala of Bombay, Parsee inhabitant who will hereafter be called the vendor of the one part and Bai Gangabai widow of Gangadas Rangildas of Bombay, Hindu inhabitant who will hereafter be called the purchaser of the other part. The said vendor has made a bargain to sell (? the property) to the said purchaser for Rs. 33,750."

The agreement was signed by the parties as follows:—

"Sonabai Cawasji Gheewalla."

"Gangabai widow and executrix of Shah Gangadas Rangildas."

The following among other issues were raised at the trial on behalf of the 1st defendant.

1. Whether the agreement referred to in the plaint was intended to be an agreement for the sale by the 1st defendant as administratrix of her father's estate of the whole of the property in question?

2. Whether the plaintiff is entitled to rectification of the alleged agreement for sale?

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3. Whether the plaintiff is entitled to specific performance of the said agreement?

After deciding the first two issues above mentioned in the manner stated in the judgment, the learned judge refused to grant specific performance of the agreement on the ground that the 1st defendant was under a very serious mistake and delusion with regard to the price to be paid for the property in question.

As regards the 2nd defendant the suit was dismissed with costs at the first hearing on the ground that the plaint disclosed no cause of action against her.

*Jinnah, Wadia and Mirza* for the plaintiff.

*Weldon and Moos* for the 1st defendant.

*Taraporevala and Dadachanji* for the 2nd defendant.

BEAMAN, J.:—The plaintiff in this suit seeks specific performance of an agreement to sell a certain property in Sheikh Memon Street, alleged to have been entered into on the 18th of January 1914, between the said plaintiff and the defendant Sonabai, administratrix of the estate of her deceased father. The plaintiff also asks for the rectification of the agreement, if necessary, by the insertion of words not therein to be found at present, making it clear, that the contract was entered into by Sonabai as administratrix. Before the case was opened, the learned counsel for the plaintiff asked leave to raise an additional issue which implies, as I understand it, the abandonment of this supplementary prayer for rectification. No evidence has been led in the course of this trial to prove any mutual mistake in the actual wording of the agreement, Exhibit E; but in its final form the plaintiff's case amounts to this, that

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inasmuch as Sonabai was the administratrix and purported to convey the whole of the property in suit without any qualification or words of limitation, she must be presumed in law to have agreed to convey the highest estate she was capable of conveying ; and that too without the need of any designatory words such as administratrix. I have been referred to certain cases upon this subject, and notably the case of *Bijraj Nopani v. Pura Sundary Dasee*<sup>(1)</sup> and the very informing case of *In re Venn & Furze's contract*.<sup>(2)</sup> Ever since the trial commenced I have bestowed my best attention upon this interesting point, and although it was only in counsel's concluding arguments that the case of *In re Venn & Furze's contract*<sup>(2)</sup> was brought to my notice, I had independently arrived at the principle, to which I think Stirling J.'s judgment in that case gives very clear expression. It appears to me, as a general principle, that where a person has two estates, one larger and the other smaller, and purports to convey the entire property without any words of limitation, he must always be taken to be conveying the highest estate he has, that is to say, if an executor having a one-third personal beneficial interest in the estate purports to convey the whole of it without qualification or limitation, he must be taken to be conveying, in his character as executor and not in that of one having a beneficial interest, only in a fraction of the whole estate purported to be conveyed. Upon this general principle, which I believe to be universally valid and applicable, exceptions may be grafted with reference to the particular facts of particular cases. Thus, where, upon the facts found, the Court is satisfied that both the parties must have been aware that the intention of the vendor was to restrict what was being sold to his personal lesser interest and where the Court also finds that that was the intention

<sup>(1)</sup> (1914) 42 Cal. 56.

<sup>(2)</sup> [1894] 2 Ch. 101.

of the vendor, then, no doubt, the conveyance would only be effectual to that extent. But that is really no exception at all to the general rule I have stated. It appears to me to make not the slightest difference whether in such circumstances, the vendor is expressly designated as executor or administrator if, in fact, and to the knowledge of the purchaser, he be an executor or administrator and purports to convey without limitation the whole estate. Nor do I think any distinction can be maintained in principle between actual conveyances and agreements to convey for the purposes of applying this general rule. If I am right so far, it is obvious that there is no case for rectification here, because there is no need for it. If the agreement of the 18th of January 1914 was really the agreement of the administratrix, then, in my opinion, it would be as much an act of Sonabai in that capacity whether or not she be described on the paper as administratrix. [His Lordship then dealt with the questions of fact which are not material for the report of this case.]

Attorneys for the plaintiff: Messrs. *Tyabji Dayabai & Co.*

Attorneys for the 1st defendant: Messrs. *Pocha & Co.*

Attorneys for the 2nd defendant: Messrs. *Dubash & Co.*

M. F. N.

[*Note.*—The plaintiff appealed from the above judgment, and at the hearing of the appeal the parties at the suggestion of the Court agreed to a decree for specific performance being passed, on the plaintiff paying all costs of the first defendant and agreeing to pay an enhanced price for the property in question.]

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