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guarantee under Art. 25(1) and rendering the protection illusory.

In my view the petitioner is entitled to the relief that he seeks and the petition will accordingly be allowed.

BY COURT : In accordance with the majority view of this Court, the petition is allowed. The petitioner is entitled to his costs.

Petition allowed.

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January 11.

THE JUMMA MASJID, MERCARA

v.

KODIMANIANDRA DEVIAH

(J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and T. L. VENKATARAMA AIYAR, JJ.)

Transfer of Property—Sale by reversioner for consideration —Fraudulent or erroneous representation—Present transferable interest, though in fact spes successionis—Subsequent acquisition of title—Effect—Rule of estoppel—When to be resorted to Transfer of Property Act, 1882(4 of 1882), s. 6(a). Interpretation of Statute—Construing of section—If new words could be read into it—Illustration to a section When could be used to enlarge the language—If admissible in construing a section.

M and S claiming to be reversioners to the estate of N sold the property in dispute to G predecessor-in-interest of the respondents. The sale deed recited that the property belonged to the joint family of two brothers N and B, and on the death of N it was inherited by his widow and on her death it had devolved upon them as reversioners to the state. G sued to recover possession of the properties. The suit was contested by the widow of B(brother of N) claiming that the property was the self acquired property of her husband. During the pendency of the litigation the widow died, and G applied to the revenue authorities to transfer the 'pattas' in his name. The appellants intervened alleging that the property was gifted to them by the widow, and S one of the reversioners had also executed a release of the said property for a consideration. This objection was rejected. The appellants then sued for possession of a half share in the properties held by the widow of B, relying upon the gift by the widow, and the deed of surrender by S one of the two reversioners to the estate of N. They contended that the Vendors of the property to G had

only a *spes successionis* during the life time of the widow of B, and the transfer was on that account void and conferred no title. The heirs of G contended that the property was sold to G by M and S on a representation that the Vendor had become entitled thereto, and the appellants as transferees from S were estopped from asserting that it was in fact the self-acquisition of B and that in consequence he had no title at the date of the sale.

Held, that where a person transfers property representing that he has a present interest therein, whereas he has, in fact, only a *spes successionis*, the transferee is entitled to the benefit of s. 43 of the Transfer of Property Act, 1882, if he has taken the transfer for consideration and on the faith of the representation.

Held, further, that apart from the exception in favour of transferees for consideration in good faith and without notice of the rights under the prior transfer s. 43 of the Transfer of Property Act is absolute and unqualified in its operation. It applies to all transfers which fulfil the conditions prescribed therein, and it makes no difference in its application whether the defect of title in the transferor arises by reason of his having no interest in the property, or of his interest therein being that of an expectant heir. The section deals with transfers which fail for want of title in the transferor and not want of capacity in him at the time of transfer. It embodies a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on the representation. It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. In view of the specific provision of s. 43 the principle of estoppel against a statute does not apply to transfers prohibited by s. 6 (a) of the Act. The two provisions operate in different fields and under different conditions. There is no necessary conflict between them, and the ambit of one cannot be cut down by reference to the other. Section 6(a) enacts a rule of substantive law, while s. 43 enacts a rule of estoppel which is one of evidence.

Held, also, that if the language of the section clearly excludes from its purview certain matters, it would not be legitimate to use the illustration to the section to enlarge it. It is not to be readily assumed that an illustration to a section is repugnant to it and rejected.

Vickers v. *Evans*, (1910)79 L.J.K.B. 955, relied on.

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Sadiq Ali Khan v. *Jai Kishori*, A.I.R. 1928 P.C. 152, *Gadigeppa* v. *Balangauda*, (1931) I.L.R. 55 Bom. 741, *Ajudhia Prasad* v. *Chandan Lal*, I.L.R. (1937) All. 860 F. B.; *Mohomed Syedol Ariffin* v. *Yeoh Ooi Gark*; (1916) L.R. 43 I.A. 256; *Levine* v. *Brougham*, (1909) 25 T.L.R. 265; *Leslie Ltd.* v. *Sheill*, [1914] 3 K.B. 607 and *Khan Gul* v. *Lakha Singh* (1928) I.L.R. 9 Lah. 701(F. B.), referred to.

Alamanaya Kunigari Nabi Sab v. *Murukuti Papiah*, (1915) 29 M.L.J. 733, *Shyam Narain* v. *Mangal Prasad*, (1935) I.L.R. 57 All. 474, *Vithabai* v. *Malhar Shankar*, I.L.R. (1938) Bom. 155, *Ram Japan* v. *Jageswara Kuer*, A.I.R. 1939 Pat. 116 and *Syed Bismilla* v. *Munulal Chabildas*, A.I.R. 1931 Nag. 51, approved.

Official Assignee, Madras v. *Sampath Naidu*, 65 M.L.J. 588 and *Bindeshwari Singh* v. *Har Narain Singh*, (1929) I.L.R. 4 Luck. 622, disapproved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 207 of 1956.

Appeal from the judgment and decree dated November 5, 1952, of the Madras High Court in Appeal No. 852 of 1948.

R. Thiagarajan and *G. Gopalakrishnan*, for the appellant.

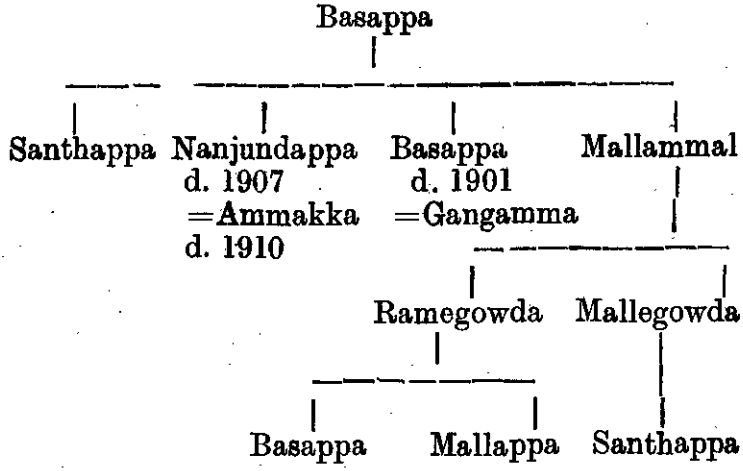
Ganapathy Iyer, for rospondent No. 3.

1962. January 11. The Judgment of the Court was delivered by

Aiyar J.

VENKATARAMA AIYAR, J.—This is an appeal against the Judgment of the High Court of Madras, dismissing the suit filed by the appellant, as Muthavalli of the Jumma Masjid, Mercara for possession of a half-share in the properties specified in the plaint. The facts are not in dispute. There was a joint family consisting of three brothers, Santhappa, Nanjundappa and Basappa. Of these, Santhappa died unmarried, Basappa died in 1901, leaving behind a widow Gangamma, and Najundappa died in 1907 leaving him surviving his widow Ammakka, who succeeded to all the family properties as his heir. On the death of Ammakka, which took place in 1910, the estate devolved on Basappa, Mallappa and Santhappa, the sister's grandsons of

Nanjundappa as his next reversioners. The relationship of the parties is shown in the following genealogical table.



On August 5, 1900, Nanjundappa and Basappa executed a usufructuary mortgage over the properties which form the subject-matter of this litigation, and one Appanna Shetty, having obtained an assignment thereof, filed a suit to enforce it, O. S. 9 of 1903, in the court of the Subordinate Judge, Coorg. That ended in a compromise decree, which provided that Appanna Shetty was to enjoy the usufruct from the hypotheca till August, 1920, in full satisfaction of all his claims under the mortgage, and that the properties were thereafter to revert to the family of the mortgagors. By a sale deed dated November 18, 1920, Ex. III, the three reversioners, Basappa, Nallappa and Santhappa, sold the suit properties to one Ganapathi, under whom the respondents claim, for a consideration of Rs. 2,000. Therein the vendors recite that the properties in question belonged to the joint family of Nanjundappa and his brother Basappa, that on the death of Nanjundappa, Ammakka inherited them as his widow, and on her death, they had devolved on them as the next reversioners of the last male

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owner. On March 12, 1921, the vendors executed another deed, Ex. IV, by which Ex. III was rectified by inclusion of certain items of properties, which were stated to have been left out by oversight. It is on these documents that the title of the respondents rests.

On the strength of these two deeds, Ganapathi sued to recover possession of the properties comprised therein. The suit was contested by Gangamma, who claimed that the properties in question were the self-acquisitions of her husband Basappa, and that she, as his heir, was entitled to them. The Subordinate Judge of Coorg who tried the suit accepted this contention, and his finding was affirmed by the District Judge on appeal, and by the Judicial Commissioner in second appeal. But before the second appeal was finally disposed of, Gangamma died on February 17, 1933. Thereupon Ganapathi applied to the revenue authorities to transfer the patta for the lands standing in the name of Gangamma to his own name, in accordance with the sale deed Ex. III. The appellant intervened in these proceedings and claimed that the Jumma Masjid, Mercara, had become entitled to the properties held by Gangamma, firstly, under a *Sadakah* or gift alleged to have been made by her on September 5, 1932, and, secondly, under a deed of release executed on March 3, 1933, by Santhappa, one of the reversioners, relinquishing his half-share in the properties to the mosque for a consideration of Rs. 300. By an order dated September 9, 1933, Ex. II, the revenue authorities declined to accept the title of the appellant and directed that the name of Ganapathi should be entered as the owner of the properties. Pursuant to this order, Ganapathi got into possession of the properties.

The suit out of which the present appeal arises was instituted by the appellant on January 2, 1945, for recovery of a half-share in the properties that

had been held by Gangamma and for mesne profits. In the plaint, the title of the appellant to the properties is based both on the gift which Gangamma is alleged to have made on September 5, 1932, and on the release deed executed by Santhappa, the reversioner, on March 3, 1933. With reference to the title put forward by the respondents on the basis of Ex. III and Ex. IV, the claim made in the plaint is that as the vendors had only a *spes successionis* in the properties during the lifetime of Gangamma, the transfer was void and conferred no title. The defence of the respondents to the suit was that as Santhappa had sold the properties to Ganapathi on a representation that he had become entitled to them as reversioner of Nanjundappa, on the death of Ammakka in 1910, he was estopped from asserting that they were in fact the self-acquisitions of Basappa, and that he had, in consequence, no title at the dates of Ex. III and Ex. IV. The appellant, it was contended, could, therefore, get no title as against them under the release deed Ex. A, dated March 3, 1933.

The District Judge of Coorg who heard the action held that the alleged gift by Gangamma on September 5, 1932, had not been established, and as this ground of title was abandoned by the appellant in the High Court, no further notice will be taken of it. Dealing next with the title claimed by the appellant under the release deed, Ex. A. executed by Santhappa, the District Judge held that as Ganapathi had purchased the properties under Ex. III on the faith of the representation contained therein that the vendors had become entitled to them on the death of Ammakka in 1910, he acquired a good title under s. 43 of the Transfer of Property Act, and that Ex. A could not prevail as against it. He accordingly dismissed the suit. The plaintiff took the matter in appeal to the High Court, Madras, and in view of the conflict of authorities on the question in that Court, the case was refer

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red for the decision of a Full Bench. The learned Judges who heard the reference agreed with the court below that the purchaser under Ex. III had, in taking the sale, acted on the representation as to title contained therein, and held that as the sale by the vendors was of properties in which they claimed a present interest and not of a mere right to succeed in future, s. 43 of the Transfer of Property Act applied, and the sale became operative when the vendors acquired title to the properties on the death of Gangamma on February 17, 1933. In the result, the appeal was dismissed. The appellant then applied for leave to appeal to this Court under Art. 133(1)(c), and the same was granted by the High Court of Mysore to which the matter had become transferred under s. 4 of Act 72 of 1952. That is how the appeal comes before us.

The sole point for determination in this appeal is, whether a transfer of property for consideration made by a person who represents that he has a present and transferable interest therein, while he possesses, in fact, only a *spes successionis*, is within the protection of s. 43 of the Transfer of Property Act. If it is, then on the facts found by the courts below, the title of the respondents under Ex. III and Ex. IV must prevail over that of the appellant under Ex. A. If it is not, then the appellant succeeds on the basis of Ex A.

Section 43 of the Transfer of Property Act runs as follows :—

> "Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contact of transfer subsists.

> Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

Considering the scope of the section on its terms, it clearly applies whenever a person transfers property to which he has no title on a representation that he has a present and transferable interest therein, and acting on that representation, the transferee takes a transfer for consideration. When these conditions are satisfied, the section enacts that if the transferor subsequently acquires the property, the transferee becomes entitled to it, if the transfer has not meantime been thrown up or cancelled and is subsisting. There is an exception in favour of transferees for consideration in good faith and without notice of the rights under the prior transfer. But apart from that, the section is absolute and unqualified in its operation. It applies to all transfers which fulfil the conditions prescribed therein, and it makes no difference in its application, whether the defect of title in the transferor arises by reason of his having no interest whatsoever in the property, or of his interest therein being that of an expectant heir.

The contention on behalf of the appellant is that s. 43 must be read subject to s. 6 (a) of the Transfer of Property Act which enacts that "The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature, cannot be transferred." The argument is that if s. 43 is to be interpreted as having application to cases of what are in fact transfers of *spes successionis*, that will have the effect of nullifying s. 6 (a), and that therefore it would be proper to construe s. 43 as limited to cases of transfers other than those falling within s. 6(a). In effect, this argument involves importing

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into the section a new exception to the following effect; "Nothing in this section shall operate to confer on the transferee any title, if the transferor had at the date of the transfer an interest of the kind mentioned in s. 6 (a)." If we accede to this contention we will not be construing s.43. but rewriting it. "We are not entitled", observed Lord Loreburn L. C., in *Vickers* v. *Evans* (1), "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

Now the compelling reason urged by the appellant for reading a further exception in s. 43 is that if it is construed as applicable to transfers by persons who have only *spes successionis* at the date of transfer, it would have the effect of nullifying s. 6(a). But section 6(a) and s. 43 relate to two different subjects, and there is no necessary conflict between them; Section 6 (a) deals with certain kinds of interests in property mentioned therein, and prohibits a transfer *simpliciter* of those interests. Section 43 deals with representations as to title made by a transferor who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferor subsequently acquires. Section 6 (a) enacts a rule of substantive law, while s. 43 enacts a rule of estoppel which is one of evidence. The two provisions operate on different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other. In our opinion, both of them can be given full effect on their own terms, in their respective spheres. To hold that transfers by persons who have only a *spes successionis* at the date of transfer are not within the protection afforded by s. 43 would destroy its utility to a large extent.

It is also contended that as under the law there can be no estoppel against a statute transfers

(1) (1910) 79 L. J. K. B. 955.

which are prohibited by s. (6a) could not be held to be protected by s. 43. There would have been considerable force in this argument if the question fell to be decided solely on the terms of s. 6 (a). Rules of estoppel are not to be resorted to for defeating or circumventing prohibitions enacted by statutes on grounds of public policy. But here the matter does not rest only on s. 6 (a). We have in addition, s. 43, which enacts a special provision for the protection of transferees for consideration from persons who represent that they have a present title, which, in fact, they have not. And the point for decision is simply whether on the facts the respondents are entitled to the benefit of this section. If they are, as found by the courts below, then the plea of estoppel raised by them on the terms of the section is one pleaded under, and not against the statute.

The appellant also sought to rely on the decisions wherein it has been held that a plea of estoppel could not be raised against a minor who had transferred property on a representation that he was of age, and that s. 43 was inapplicable to such transfers, *vide Sadiq Ali Khan* v. *Jai Kishori* (1) *Gadigeppa* v. *Balanagauda* (2) *Ajudhia Prasad* v. *Chandan Lal*(3) But the short answer to this contention is that s. 43 deals with transfers which fail for want of title in the transferor and not want of capacity in him at the time of transfer. It may further be observed in this connection that the doctrine of estoppel has been held to have no application to persons who have no contractual capacity where the claim is based on contract, *vide Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark* (4); *Levine* v. *Brougham* (5), *Leslie Ltd.* v. *Sheill* (6); *Khan Gul* v. *Lakha Singh* (7). Decisions on transfers by minors therefore are of no assistance in ascertaining the true scope of s. 43.

(1) A.I.R. 1928 PC. 152 (2) (1931) I.L.R. 55 Bom. 741.
(3) I.L.R. (1937) All. 860 F.B. (4)(1916) L.R. 43 I.A.256; [1916]2A.C.575.
(5) (1909) 25 I.L.R. 265. (6) [1914] 3 K. B. 607.
(7) (1928) I.L.R. 9 Lah. 701 (F. B.).

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So far we have discussed the question on the language of the section and on the principles applicable thereto. There is an illustration appended to s. 43, and we have deferred consideration thereof to the last as there has been a controversy as to how far it is admissible in construing the section. It is as follows:—

> "A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him."

In this illustration, when A sold the field Z to C, he had only a *spes successionis*. But he having subsequently inherited it, C became entitled to it. This would appear to conclude the question against the appellant. But it is argued that the illustration is repugnant to the section and must be rejected. If the language of the section clearly excluded from its purview transfers in which the transferor had only such interest as is specified in s. 6(a), then it would undoubtedly not be legitimate to use the illustration to enlarge it. But far from being restricted in its scope as contended for by the appellant, the section is, in our view, general in its terms and of sufficient amplitude to take in the class of transfers now in question. It is not to be readily assumed that an illustration to a section is repugnant to it and rejected. Reference may, in this connection, be made to the following observations of the judicial Committee in *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark* (1) as to the value to be given to illustrations appended to a section, in ascertaining its true scope:

(1) (1916) L. R. 43. I.A. 256; [1916] 2 A. C. 575.

"It is the duty of a court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they are the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although no part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired."

We shall now proceed to consider the more important cases wherein the present question has been considered. One of the earliest of them is the decision of the Madras High Court in *Alamanaya Kunigari Nabi Sab* v. *Murukuti Papiah* (1). That arose out of a suit to enforce a mortgage executed by the son over properties belonging to the father while he was alive. The father died pending the suit, and the properties devolved on the son as his heir. The point for decision was whether the mortgagee could claim the protection of s. 43 of the Transfer of Property Act. The argument against it was that "s. 43 should not be so construed as to nullify s. 6(a) of the Transfer of Property Act, by validating a transfer initially void under s. 6(a)" In rejecting this contention, the Court observed :—

"This argument, however, neglects the distinction between purporting to transfer 'the chance of an heir-apparent,' and 'erroneously representing that he (the transferor) is

(1) (1915) 29 M.L.J. 733.

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authorised to transfer certain immoveable property." It is the latter course that was followed in the present case. It was represented to the transferee that the transferor was *in praesenti* entitled to and thus authorise to transfer the property." (p. 736)

On this reasoning, if a transfer is statedly of an interest of the character mentioned in s. 6(a), it would be void, whereas, if it purports to be of an interest *in praesenti*, it is within the protection afforded by s. 43.

Then we come to the decision in *The Official Assignee, Madras* v. *Sampath Naidu* (1), where a different view was taken. The facts were that one V. Chetti had executed two mortgages over properties in respect of which he had only *spes successionis*. Then he succeeded to those properties as heir and then sold them to one Ananda Mohan. A mortgagee claiming under Ananda Mohan filed a suit for a declaration that the two mortgages created by Chetty before he had become entitled to them as heir, were void as offending s. 6(a) of the Transfer of Property Act. The mortgagee contended that in the events that had happened the mortgages had become enforceable under s. 43 of the Act. The Court negatived this contention and held that as the mortgages, when executed, contravened s. 6(a), they could not become valid under s. 43. Referring to the decision in *Alamanaya Kunigari Nabi Sab* v. *Murukuti Papiah* (2), the Court observed that no distinction could be drawn between a transfer of what is on the face of it *spes successionis*, and what purports to be an interest *in praesenti*. "If such a distinction were allowed", observed Bardswell, J., delivering the Judgment of the Court, "the effect would be that by a clever description of the property dealt with in a deed of transfer one would be allowed to conceal the real nature of the transaction and evade a clear statutory prohibition."

(1) (1933) 65 M.L.J. 588. (2) (1915) 29 M. L. J. 733.

This reasoning is open to the criticism that it ignores the principle underlying s. 43. That section embodies, as already stated, a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts *bona fide* or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision under consideration was given, the relevant words of s. 43 were, "where a person erroneously represents", and now, as amended by Act 20 of 1929, they are "where a person fraudulently or erroneously represents", and that emphasises that for the purpose of the section it matters not whether the transferor act fraudulently or innocently in making the representation, and that what is material is that he did made representation and the transferee has acted on it. Where the transferee knew as a fact that the transferor did not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section 43 would then have no application, and the transfer will fail under s. 6(a). But where the transferee does act on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in s. 43, however fraudulent the act of the transferor might have been.

The learned Judges were further of the opinion that in view of the decision of the Privy Council in *Ananda Mohan Roy* v. *Gour Mohan Mullick* (1) and the decision in *Sri Jagannada Raju* v. *Sri Rajah Prasada Rao* (2), which was approved therein, the illustration to s. 43 must be rejected as repugnant to it. In *Sri Jagannada Raju's case* (2), the question was whether a contract entered into by certain

(1) (1923) L.R. 50 I.A. 239; (1923) I.L.R. 50 Cal. 929.
(2) (1916) I.L.R. 39 Mad. 554

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presumptive reversioners to sell the estate which was then held by a widow as heir could be specifically enforced, after the succession had opened. It was held that as s. 6(a) forbade transfers of *spes successionis*, contracts to make such transfers would be void under s. 23 of the Contract Act, and could not be enforced. This decision was approved by the Privy Council in *Ananda Mohan Roy* v. *Gour Mohan Mullick* (1), where also the question was whether a contract by the nearest reversioner to sell property which was in the possession of a widow as heir was valid and enforceable, and it was held that the prohibition under s. 6(a) would become futile, if agreements to transfer could be enforced. These decisions have no bearing on the question now under consideration, as to the right of a person who for consideration takes a transfer of what is represented to be an interest *in praesenti*. The decision in *The Official Assignee, Madras* v. *Sampath Naidu* (2) is, in our view, erroneous, and was rightly overruled in the decision now under appeal.

Proceeding on to the decisions of the other High Courts, the point under discussion arose directly for decision in *Shyam Narain* v. *Mangal Prasad* (3). The facts were similar to those in *The Official Assignee, Madras* v. *Sampath Naidu* (2). One Ram Narayan, who was the daughter's son of the last male owner sold the properties in 1910 to the respondents, while they were vested in the daughter Akashi. On her death in 1926, he succeeded to the properties as heir and sold them in 1927 to the appellants. The appellants claimed the estate on the ground that the sale in 1910 conferred no title on the respondents as Ram Narayan had then only a *spes successionis*. The respondents contended that they became entitled to the properties when Ram Narayan acquired them as heir in 1926. The learned Judges, Sir S. M. Sulaiman, C. J., and Rachhpal Singh, J., held, agreeing with

(1) (1923) L. R. 50I. A. 239; (1923) I. L. R. 50 Cal. 929.
(2) (1933) 65 M. L. J. 588. (3) [1935] I.L.R. 57 All. 474.

the decision in *Alamanaya Kunigari Nabi Sab* v. *Murukuti Papiah* (1), and deffering from *The Official Assignee, Madras* v. *Sampath Naidu* (2) and *Bindeshwari Singh* v. *Har Narain Singh*(3), that s.43 applied and that the respondents had acquired a good title. In coming to this conclusion, they relied on the illustration to s. 43 as indicating its true scope, and observed: —

> " Section 6 (a) would, therefore, apply to cases where professedly there is a transfer of a mere *spes successionis*, the parties knowing that the transferor has no more right than that of a mere expectant heir. The result, of course, would be the same where the parties knowing the full facts fraudulently clothe the transaction in the garb of a an out and out sale of the property, and there is no erroneous representation made by the transferor to the transferee as to his ownership.
>
> " But where an erroneous representation is made by the transferor to the transferee that he is the full owner of the property transferred and is authorized to transfer it and the property trasferred is not a mere chance of succession but immoveable property itself, and the transferee acts upon such erroneous representation, then if the transferor happens later, before the contract of transfer comes to an end, to acquire an interest in that property, no matter whether by private purchase, gift, legacy or by inheritance or otherwise, the previous transfer can at the option of the transferee operate on the interest which has been subsequently acquired, although it did not exist at the time of the transfer." (pp. 478,479).

This decision was followed by the Bombay High Court in *Vithabai* v. *Malhar Shankar* (4) and by the

(1) [1915] 29 M. L. J. 738.
(2) [1933] 65 M.L.J. 588.
(3) (1929) I. L. R. 4 Luck. 622.
(4) I. L. R. (1938) Bom. 155.

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Patna High Court in *Ram Japan* v. *Jagesara Kuer*(1). A similar view had been taken by the Nagpur High Court in *Syed Bismilla* v. *Manulal Chabildas* (2).

The preponderance of judicial opinion is in favour of the view taken by the Madras High Court in *Alamanaya Kunigari Nati Sab* v. *Murukuti Papiah* (3), and approved by the Full Bench in the decision now under appeal. In our judgment, the interpretation placed on s. 43 in those decisions correct and the contrary opinion is erroneous. We accordingly hold that when a person transfers property representing that he has a present interest therein, whereas he has, in fact, only a *spes successionis*, the transferee is entitled to the benefit of s. 43, if he has taken the transfer on the faith of that representation and for consideration. In the present case, Santhappa, the vendor in Ex. III, represented that he was entitled to the property *in praesenti*, and it has been found that the purchaser entered into the transaction acting on that representation. He therefore acquired title to the properties under s. 44 of the Transfer of Property Act, when Santhappa became *in titulo* on the death of Gangamma on February 17, 1933, and the subsequent dealing with them by Santhappa by way of release under Ex. A did not operate to vest any title in the appellant.

The Courts below were right in upholding the title of the respondents, and this appeal must be dismissed with costs of the third respondent, who alone appears.

Appeal dismissed.

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(1) A I. R. 1939. Pat. 116, (2) A. I. R 1931 Nag. 51.
(3) [1915] 29 M.L.J. 733.