

IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Civil Appeal No. 32 of 1978

Between:

MADAN GOPAL
s/o Ram Raj

Appellant

and

LILA WATI
d/o Suruj Bali

Respondent

S. Prasad for the Appellant
C. Gordon for the Respondent

Date of Hearing: 16 November 1978
Delivery of Judgment:

ORAL JUDGMENT OF THE COURT

Henry J.A.

This is an appeal from a judgment of Tuivaga J. in which he made an order for possession of certain land occupied by appellant and refused relief to appellant by way of a declaration of trust in respect of the same land. Respondent is the lessee under a memorandum of lease granted by the Native Land Trust Board for a period of 99 years from January 1, 1977. This lease was registered in the Land Registry as No. 15429 on October 12, 1977. We agree that this is the relevant date on which the present appeal must be determined. Memorandum of lease No. 15429 was granted by the Native Land Trust Board pursuant to its powers under the provisions of the Native Land Trust Ordinance (Cap. 115). Under that Ordinance the Board is empowered to grant leases of native land. This land, according to the lease, is owned by the Mataqali Tukani Tokatoka Korotu. The Ordinance makes provision for the registration of such a memorandum of lease under the Land Transfer Act 1971. Upon registration it became the "root

title" since the land itself is not registered under the Act. The position, therefore, is that upon registration there was a registered grant to respondent under an instrument of title, namely the said memorandum of lease which gave to respondent the protection of section 39 of the Land Transfer Act 1971. This section reads:

"39(1) Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, shall, except in case of fraud, hold the same subject to such encumbrances as may be notified on the folium of the register, constituted by the instrument of title thereto, but absolutely free from all other encumbrances whatsoever except -

- (a) the estate or interest of a proprietor claiming the same land, estate or interest under a prior instrument of title registered under the provisions of this Act; and
- (b) so far as regards any portion of land that may be wrong description or parcels or of boundaries be erroneously included in the instrument of title of the registered proprietor not being a purchaser or mortgagee for value or deriving title from a purchaser or mortgagee for value; and
- (c) any reservations, exceptions, conditions and powers contained in the original grant.

(2) Subject to the provisions of Part XIII of this Act, no estate or interest in any land subject to the provisions of this Act shall be acquired by possession or user adversely to or in derogation of the title of any person registered as the proprietor of any estate or interest in such land under the provisions of this Act."

By an amendment to the statement of defence, by leave of the Court during the hearing, an allegation of fraud was made. This was done by adding paragraphs 10 and

11 to the original statement of defence. A counterclaim followed immediately after the statement of defence. The allegations in the statement of defence were not repeated as a counterclaim. The counterclaim appeared in this form:

"WHEREFORE the Defendant counterclaims:

- (1) Declaration that the Plaintiff is holding the said land in trust for the Defendant."

Members of this Court asked counsel to define "the legal and equitable rights" referred to in paragraph 10 and "the rights" referred to in paragraph 11. Counsel asserted that appellant had a yearly tenancy granted by the Colonial Sugar Refining Co. Ltd. and referred us to the following evidence:

" I am occupying a piece of native land - residential site at Waiyavi - have stayed there a long time - since 1958.

My father bought land from one Ram Pratap. At that time land belonged to Colonial Sugar Refining Company Limited. My father was paying rent - £1 per acre - land was two acres.

After Native Land Trust Board took over land I built my house on site. Rent was paid until Native Land Trust Board took over the land."

This claim was not further elucidated but it appears that the Native Land Trust Board had earlier granted a lease to the Colonial Sugar Refining Co. and that appellant had become a tenant or sub-lessee of the said company which itself was no more than a lessee of the Board. This lease came to an end - it was said it was "surrendered" - but there is no precise evidence on this except that all rights of the company as lessee came to an end and control of the land was resumed by the Board. It seems, however, that appellant unsuccessfully endeavoured to establish some form of tenancy with the Native Land Trust Board because

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he said:

" I attempted to pay rental to Native Land Trust Board. I went several times to their office. I saw Mr. Wilisoni. He did not want to accept rental. He told me to wait until land was surveyed and he would tell the amount of rent to be paid.

It is clear that the Native Land Trust Board resumed control of the said land freed from any right of the Colonial Sugar Refining Co. Ltd. as a lessee. Acting under its powers to administer native land, at some time after the interest of the Colonial Sugar Refining Co. Ltd. as lessee had been completely terminated, the Board called for applications for a lease of 99 years in respect of the said land. Respondent made an application with the ultimate result that the said memorandum of lease was granted on September 30, 1977 and registered on October 12, 1977. Appellant took no steps to make any such application.

The Native Land Trust Board which has the control of all native land vested in it and administers it for the native owners, was not according to any evidence before the Court affected by any claim which appellant might consider he had against the Colonial Sugar Refining Co. Ltd. That company had no power to bind the Board nor to create any tenancy or other interest beyond the term of its own lease. When that term came to an end so did the term or right of any persons who might claim a title or interest through it. The Colonial Sugar Refining Co. Ltd. could not give any interest in the land in excess of its own rights under its lease so any estate or interest, if otherwise valid, which it might purport to create necessarily ceased when its lease came to an end.

From what we have said it is clear that no equitable interest was shown to exist which continued after the Board resumed control of the land and which might bind the Board. The Board had a clear right to grant the memorandum of

lease to respondent and thus to give a clear title unaffected by any claim by appellant. Neither the Board nor the respondent granted any right to appellant and at this stage no one else had the right to do so. There is thus no equitable right in appellant which, by reason of fraud (if proved), would enable appellant to claim that the grant of the said memorandum of lease to respondent was subject to any equity in appellant's favour.

We turn now to deal with the claim by counsel for appellant that fraud was proved although it is not now relevant. Counsel pointed to evidence of a dispute which took place between the parties referable to the occupation of the land; to the fact of possession by appellant; to an alleged concealment from respondent of the application to the Board for the said lease; to the allegations in paragraphs 10 and 11 of the amended statement of defence, which counsel contended had been admitted because they had not been formally denied; and finally to the fact that these matters required respondent to make proper inquiries. All these matters were factors present before registration was effected on October 12, 1977.

This claim by counsel is based on an argument that, in those circumstances, a proper inquiry would reveal that appellant had an equity of the type recognised by the Courts in cases such as Ramsden v. Dyson (1886) L.R. 1 H.L. 129 and particularly in the passage at p. 170. The Privy Council in Plimmer v. Wellington Corpn. [1881-5] All E.R. Rep. 1320, 1324:

"The law relating to cases of this kind may be taken as stated by Lord Kingsdown in the case of Ramsden v. Dyson (1866, L.R. 1 H. of L. 129). The passage is at page 170: 'If a man, under a verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing, under an expectation created or encouraged by the landlord that he shall have a certain interest, takes

possession of such land with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in Gregory v. Mighell (1811, 18 Ves. 328), and, as I conceive, is open to no doubt.' "

Any such inquiries, if made, could only be to the Native Land Trust Board and it would be disclosed that appellant had no equitable interest so far as concerns the Board so that will not help appellant to establish any equitable interest or constitute notice to respondent of the existence of any such interest. The only equitable interest set up is one claimed to be granted by the Colonial Sugar Refining Co. but its right to create any interest was limited by its own title which had expired some time earlier - a time not given in evidence. Any title, which appellant/might claim must be given by a person with an interest in the land sufficient to support the title claimed. Accordingly the lack of inquiry, even if the other grounds are accepted, cannot help appellant's case.

In the application of the principles laid down in Ramsden's case it is clear that it is the landlord who must be a party to the matters set out in the passage just cited that is to say, a person who holds an interest in the land sufficient to support the interest claimed in equity. The only landlord of appellant was the Colonial Sugar Refining Co. Ltd. which body had neither authority nor interest sufficient to create an equity as against the title of the native land being administered by the Board on behalf of the native owners. The Board certainly did nothing itself to enable appellant to set up any interest such as those recognised by Ramsden's case and similar cases cited by counsel. Unless the Board is bound by an equity in favour

of appellant it could pass a clear title to respondent. The equity must be one binding on the Board and then if fraud were proved against respondent, respondent would take subject to that equity. There is just no evidence to support any such claim.

There is, in our opinion, no evidence of fraud on the part of respondent and thus there is no ground for disturbing the findings of the learned judge. Those findings and the result which he reached are, in our opinion, correct so the appeal must fail.

The appeal is accordingly dismissed with costs to respondent.


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