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IN THE FIJI COURT OF APPEAL

At Suva

Civil Jurisdiction

CIVIL APPEAL NO. 42 OF 1991
(Civil Action No. 1246 of 1986)

BETWEEN:

MOHAMMED ALI

APPELLANT

-and-

MOHAMMED TASHEEM
WAIQELE SAWMILL LIMITED
AZIZ BEGG

RESPONDENTS

Mr. S. J. Stanton and Mr. V. Parmanandam for the Appellant
Mr. R. Singh for the Respondent

Date of Hearing : 21st August, 1992
Date of Delivery of Judgment : 28th August, 1992

JUDGMENT OF THE COURT

This is an appeal from the decision of Byrne J given on 19th December 1990 in which he gave judgment against the first of three defendants and presumably (although this is not stated in the decision), declined to give judgment against the other two defendants.

The effect of the present appeal is to invite this Court to hold that judgment should also have been given against those other defendants, who are the second and third respondents. The first respondent has taken no part in the appeal.

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In July 1983 the appellant sold to the first respondent a bulldozer blade and winch and took back a Bill of Sale in order to secure payment of the purchase price. That Bill of Sale, which is dated 28 July 1983, states that it was given by the first respondent in favour of Mohammed Sahadutt who is the appellant's brother. A dispute subsequently arose as to the real ownership of the chattels, and an action was commenced by Mohammed Sahadutt and first respondent against the appellant. That action was settled between the parties and the Terms of Settlement were filed in the Court on 20 March 1986. Those Terms recorded that the first respondent was the owner of the blade and winch. It also recorded that those chattels had been lent by the first respondent to the second respondent and that the appellant was entitled to recover possession of them within seven days.

The appellant demanded possession of the chattels from the second respondent which refused to deliver them on the basis that it had purchased them from the first respondent and was the true owner of them. It should be added that the third respondent is a director of the second respondent and was apparently joined in the action because it was claimed that he had some personal knowledge of conversations which had taken place. There appears to be no other significance in the third respondent having been made a party.

The first respondent apparently took no part in the trial in the High Court. The defence offered by the second and third respondents was that the chattels had been purchased by the second respondent on or about 21 January 1985 in good faith and without notice of any defect in the title of the first respondent.

Byrne J upheld that defence. He accepted the evidence of Jagdish Prasad, a company clerk and later secretary of the second respondent as to the purchase from the first respondent and as to the absence of any knowledge that the first defendant may not have had a good title to the chattels.

The basis of the argument advanced on behalf of the appellant was that there was evidence which would have entitled the Judge to draw the inference that the second respondent had knowledge at the time of the purchase of the appellant's claim to ownership. This does not appear from the recorded evidence to be so, but even if it were it would not avail the appellant. This Court will not interfere with the inferences drawn by the trial Judge so long as there was admissible evidence upon which they could be based. Undoubtedly in this case there was.

Evidence was given by the appellant that he had had discussions with the two directors of the second respondent and had informed them of the basis of settlement of the previous action so that they would have purchased from the first respondent with notice of his defective title. The only recorded

evidence of those discussions, however, was that they took place in about March 1985. As the sale had been completed in January 1985 any such discussions would have no significance.

There was a completed sale of the chattels by the appellant to the first respondent. There was then, by way of security, a re-sale of the chattels so that the title passed back to the mortgagee. The first respondent was, however, entitled to retain possession in terms of the Bill of Sale.

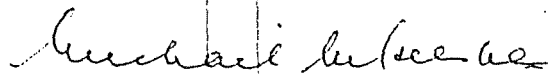
The first respondent then purported to sell the chattels to the second respondent. It accordingly becomes necessary to consider the effect of s.24 of the Sale of Goods Act Cap. 230. That section provides:

"Where the Seller of goods has a voidable title thereto but his title has not been avoided at the time of sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the Seller's defect of title."

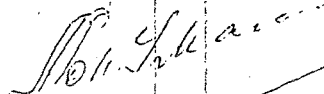
Such title as the first respondent had to the chattels was voidable because of the terms of the Bill of Sale. His purported sale could only confer a title on the second respondent if the latter bought in good faith and without notice of the Bill of Sale. Byrne J, having seen and heard the witnesses, concluded as a matter of fact that those requirements

had been complied with. In those circumstances this Court will not differ from those findings of fact. It follows that the second respondent acquired a good title.

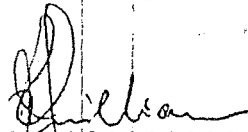
We are unable to find any error on the part of the Judge and the appeal is dismissed with costs.



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Mr Justice Michael M Helsham
President, Fiji Court of Appeal



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Sir Moti Tikaram
Resident Judge of Appeal



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Sir Peter Quilliam
Judge of Appeal