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IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

CIVIL APPEAL NO. 27 OF 1992

(High Court Civil Action No. 105 of 1991)

BETWEEN:

DAYA PRASAD

APPELLANT

-and-

MANIK PRASAD

RESPONDENT

Mr. V. Pärmanandam for the Appellant  
Mr. H. Lateef for the Respondent

Date of Hearing : 20th May, 1993  
Date of Delivery of Judgment : 20th May, 1993

JUDGMENT OF THE COURT

This is an appeal from a judgment of Fatiaki J. delivered on 1st May 1992. The case before him concerned an action for specific performance of a contract for the sale and purchase of land. The Judge dismissed the plaintiff's claim with costs.

We do not believe it is necessary to recite the facts in these reasons for judgment. They are fully and adequately set out in his Lordship's careful assessment of them. Based upon those facts the appellant sought to prove that an oral agreement for the sale by the defendant respondent to the appellant of certain land owned by the respondent had been entered into between the parties for a purchase price \$35,000, as a result of

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which the appellant had gone into possession of the land and occupied the house standing on it, thereafter paying monthly instalments of the purchase price to the defendant. The appellant claimed that the entry into possession, occupation of the house, monthly payments and some other acts which he caused to be performed at the time of taking possession or later were sufficient to invoke the doctrine of part performance and hence to overcome the legal problem caused by the absence of a note or memorandum of the contract as required by s.59(d) of the Indemnity, Guarantee and Bailment Act (Cap. 232).

The defendant's case was that there was no such agreement for sale and purchase, and that he had reached agreement with the plaintiff for the latter to become a tenant only, and upon a monthly basis. When he gave the appellant a notice to quit, the latter commenced these proceedings.

Unfortunately for the plaintiff the learned Judge did not accept his version of the facts. Although the Judge was somewhat skeptical about the defendant's evidence, having carefully reviewed it all, he said (record page 53):

"In the final analysis suffice it to say that I am not satisfied from the evidence led before me that the plaintiff's entry into possession of the "principal residence" at 17 Talasiga Street was more probably the result of an agreement to purchase the property than of an agreement to rent it "

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That is a conclusion that the trial Judge was entitled to reach on the evidence before him. There is no error that this Court can or would correct.

Although the notice of appeal contained one ground of appeal only, namely that the learned trial Judge erred in holding in the way we have just quoted, the appellant adduced further submissions relating to the Judge's exposition of the law relating to part performance. In the view that we have taken it is not necessary for us to say anything about this because it simply does not arise. We must not, however, be taken in any way as suggesting that his Lordship misdirected himself at all on this aspect of the case.

Appeal dismissed with costs.

(Sgd) Mr. Justice Michael M. Helsham  
President, Fiji Court of Appeal

(Sgd) Sir Mari Kapi  
Justice of Appeal

(Sgd) Sir Edward Williams  
Justice of Appeal