

IN THE FIJI COURT OF APPEALCIVIL JURISDICTION

CIVIL APPEAL NO. 35 OF 1991
 (High Court Civil No. 30 of 1989)

BETWEEN:

SADA NAND
BANS RAJI

APPELLANTS

-and-

RAM INDRA
KAMLESH KUMAR

RESPONDENTS

Mr. D. Sharma for the Appellants
 Mr. G.P. Shankar for the first Respondent
 No Appearance for the second Respondent

Date of Hearing : 25th August 1993
Date of Delivery of Judgment : 26th November 1993

JUDGMENT

In the opinion of this Court, the complexities in this case resolve into a very simple problem which can be simply answered.

We might add at the outset that on the material before him we have not the slightest doubt that the learned trial Judge reached the correct conclusion.

On 10th January 1983 the first respondent, who, for ease of understanding what the case is about, we shall hereafter refer to as Ram, purchased a tractor from one Hari Prasad for the price of \$6000. In February 1983 he purchased a disc plough for \$500 which at all material times was attached to the tractor. He

owned a farm, and bought the tractor for the purpose of working this farm that he owned. The tractor was registered under the provisions of the Traffic Act in the name of his son Kamlesh Kumar, who was then aged 17; it is not suggested that at any stage the son owned any land. For convenience we shall refer to him as Kamlesh. He was joined as a third party to the proceedings and appeared by counsel there. He was named as a respondent to the appeal, but did not appear.

Ram gave evidence that Kamlesh was living at home and assisting in the running of the farm and that by registering the tractor in the name of his son (a minor) he did not intend to confer ownership upon him. Subsequent events lend some credence to this assertion about which he was not cross-examined. However, the Judge made no finding about this, and as it turns out, this aspect need not be pursued. The fact is that although the application for transfer of registration (it is called ownership on the form Ex D2, record p 145) appears to have been executed by Hari Prasad and Kamlesh on 15th January 1983, it was not lodged with the authorities until about 12th June 1986 - perhaps because Kamlesh was to become 21 on 30th July 1986 (record p 160).

It is not denied that on January 1987 father and son fell out. On 10th February 1987 Kamlesh signed an application for transfer of ownership to Ram (Ex P 6, record p 129). Pausing

there, it can be noted that the grounds of appeal refer to some allegation by Kamlesh, of which there was no evidence before the trial Judge, that his signature on this document was forged (record p 5). Kamlesh was in Court and was represented at the hearing of the proceedings by Counsel, (record p 62) and no attempt was made to call him to give evidence of this or anything else. In fact nothing that his father said was challenged by him. The suggestion can be ignored. Ram paid third party insurance premiums thereafter when they fell due, and was shown as owner on the third party policy documents. Unfortunately he did not at that time present the application for transfer to the authorities for processing. While this may have resulted in a breach of the Traffic Act Cap 176, s. 19, (if the tractor was driven on a public road) it does not affect the ownership situation as we shall explain.

Whether because of differences between father and son or for some other reason Kamlesh left home, probably in September 1988. On 8th November 1988 he sought from the relevant traffic authority a document which showed that Hari Prasad had been the registered owner of the tractor until 2nd June 1986 and that thereafter Kamlesh was the registered owner (Ex D 3 record p 146). In the absence of evidence from him, there is only one inference that can be drawn from this activity. He wished to arm himself with some evidence of his ownership in preparation for

what he proposed to do, and, no doubt, to find out whether he was still on the official record as the registered owner.

On the morning of 17th November 1988 he turned up at Ram's farm with several assistants, including an Army officer, and in spite of his step-mother's protests, removed the tractor. Ram was not at home.

Ram thereafter informed the police, and set about trying to locate the tractor. He also lodged the application for transfer that had been held by him since 1987, and became registered as the owner on 21st November 1988 (record pp 30, 129, 130).

On 25th November 1988 Kamlesh sold the tractor to the appellants for \$8000 cash. He handed them the document he had procured on 8th November, mentioned earlier, and a signed application for transfer from himself to the second appellant. He also gave them a third party insurance certificate which he had procured. The second appellant did not become registered as the owner of the tractor for reasons that need not be detailed here.

Exactly when Ram found out where the tractor was does not seem to be disclosed in the evidence. It seems that it passed through the hands of several custodians before it finished up with the appellants on 25th November. On that very day Ram

obtained an injunction restraining Kamlesh from disposing of the tractor, but that action, naturally enough, was not proceeded with. On 1st February 1989 he obtained a similar type of ex parte order against the appellants, and these are the proceedings to which this appeal relates. In due course the appellants joined Kamlesh as a third party.

Now the simple position is this, although perhaps not so expressly stated by the Judge, that Kamlesh stole the tractor and then sold it to the appellants. If he did not have the intention of stealing it for the purposes of sale, which is the logical inference to be drawn, or if he felt he had some claim of right, he was not prepared to say so although, as we have noted, he was represented by counsel at the hearing and indeed in Court (see record p 73). So, naturally enough, on the evidence before him the trial Judge was entitled to find that Ram was the owner at the time the tractor was taken by Kamlesh, and that Kamlesh could not confer a good title on the appellants.

The appellants, as purchasers from him, naturally enough, claimed that they were bona fide purchasers for value without notice, so that s.23(1) of the Sale of Goods Act Cap 230, except for the portion we shall mention, did not apply to them.

That section reads as follows :

23.-(1) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better

title to the goods than the seller had, unless the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell:

Provided that nothing in this Act shall affect-

- (a) the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;*
- (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.*

The Judge, having considered all the evidence, came to the conclusion that the appellants were not bona fide purchasers (record p 112). We only have to say that there was ample evidence which enabled him to make such a finding of fact, and there is no way in which we could or would feel disposed to upset that finding.

The question of whether the conduct of Ram in allowing Kamlesh to represent himself as the owner of the tractor was raised before us. This is, of course, pursuant to the relevant portion of s. 23(1).

For reasons we will explain, this aspect would require a number of findings of fact to be made. It would require exploration of the reason(s), if any, as to why Ram did not present to the relevant authorities for registration the application for transfer of ownership from Kamlesh to himself dated 10th February 1987.

At the outset we note that this matter was not dealt with by

the Judge. The reason is that there was no such submission made to him. At the conclusion of the hearing he ordered written submissions. Those of the appellants did not make any claim on this score. Probably that was because Ram was not cross-examined on this aspect, or at least from the record it does not appear that he was.

Secondly, on the material before us, it does not seem to us that any claim on this score was likely to succeed. Ram all along claimed that he was the owner; that could be a reason why he did not feel it necessary to present the application for registration. The only time that the tractor had ever been taken by Kamlesh was in September 1987, apparently to his girl-friend's farm and he brought it back on request (record p 63). Ram also gave evidence that could explain the non-presentation (record pp 65,66). The non-presentation enabled Kamlesh to carry out his plan of removing the tractor and of selling it as if he were the registered owner; the appellants did not make any inquiries from the relevant authorities. If they had they would have found Ram and not Kamlesh was the registered owner. We very much doubt if the section reaches out to allow someone who is not prepared to give evidence that he had any belief that he was the owner, wrongly to remove a vehicle and sell it off as his own. Where an owner who has no suspicion that his goods are going to be removed, unwittingly arms the person who removes them with the means of passing them off as his own, and who immediately takes action to prevent it which would probably have succeeded if the

purchasers were bona fide, we would be very reluctant to find that it was his conduct that put the seller in a position to allege authority to sell. Finally it seems that the Traffic Act Cap 176, s 19, and from the evidence of the officer from the authority, does not make registration of ownership mandatory if the vehicle is not going to be used on a public road (record p 69). The evidence did not establish whether it was to be so used after 1987 or not.

These aspects should all have been explored in evidence if this point was going to be relied upon. They were not, and it was not. We do not propose to rely on any absence to reach any conclusion with respect to this aspect of s 23 of the Sale of Goods Act. No application to re-open to have it further probed has been made. If the section reaches out to protect a buyer who is not a bona fide purchaser who has the chattels in his possession because they were stolen, we would be surprised.

Finally, we might say a word about whether registration of a vehicle under the provisions of the Traffic Act establishes (i) ownership, (ii) is necessary to establish ownership, (iii) is conclusive evidence of ownership, (iv) is merely evidence of ownership. Whilst it is unnecessary for the purposes of this appeal to do so, we nevertheless point out that (iv) above is

clearly the situation. Section 19(1)(a) and (b) are as follows:

- 19.-(1) (a) No motor vehicle the ownership of which has been transferred by the registered owner shall be used on a road for more than 7 days after the date of such transfer unless the new owner is registered as the owner thereof.
- (b) Upon the transfer of ownership of a motor vehicle, the registered owner thereof shall, within 7 days from the date of such transfer, inform the licensing authority of the area in which the vehicle is registered in writing of the name and address of the new owner, and the date of change of ownership of the motor vehicle.

It quite clearly assumes or requires ownership before doing whatever has to be done in relation to registration. In particular it only appears to require registration of goods being a motor vehicle if it is to be used on a road.

The appeal will be dismissed with costs.

Michael M Helsham

 Mr Justice Michael M Helsham
President Fiji Court of Appeal

Moti Tikaram

 Sir Moti Tikaram
Resident Justice of Appeal

E. S. Williams

 Sir Edward Williams
Justice of Appeal