

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO 45 OF 1992

(High Court Civil Action No. 92 of 1988)

BETWEEN:

SURUJ NARAYAN

APPELLANT

-and-

BRIJ RAM

RESPONDENT

Mr. S. Parshotam for the Appellant
Mr. A. K. Narayan for the Respondent

Date of Hearing : 5th August, 1993
Date of Delivery of Judgement: 13th August, 1993

JUDGMENT OF THE COURT

The respondent sued the appellant for a sum of money plus interest based on a written agreement. This agreement was entered into in the following circumstances. Both parties are brothers. The appellant in April 1979 bought a Crown Lease in Drasa being Crown Lease Number 8276 (L.D. 4/7/1789) from a Shankaran Nair s/o Raman Nair for \$30,000 (Thirty Thousand Dollars). The respondent alleges that it was in respect of the purchase of this property that he lent to the appellant a sum of \$10,000 (Ten Thousand Dollars) to be paid back within a reasonable time. There was no written agreement on this at that time.

It is alleged that the appellant had not paid any of this money back. That on the 10th day of June 1985, they entered into a written agreement witnessed by Solicitor, Raj Kumar, a

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debt of \$10,000.00 (Ten Thousand Dollars) owed by the appellant and time was extended to enable the appellant to pay back the money. It is in the following terms:

"AN AGREEMENT made this 10th day of June, 1985 BETWEEN BRIJ RAM son of Rameshwar Prasad of Nukuloa, in the District of Ba in the Dominion of Fiji, Cultivator (hereinafter together with his Executors, Administrators and Assigns referred to as 'the Creditor') of the first part AND SURUJ NARAYAN son of Rameshwar Prasad of Drasa in the city of Lautoka, in the Dominion of Fiji, Cultivator (hereinafter together with his Executors, Administrators and Assigns referred to as 'the Debtor') of the second part.

WHEREAS the Creditor and Debtor are brothers AND WHEREAS the Debtor had bought a Crown Land known as Lot 6 Plan BA 2403 Pt. of Tanarau Formerly CT 4931, LD NO: 4/7/1789 and Farm No: 14126 Drasa Sector and WHEREAS the Creditor had contributed \$10,000.00 (TEN THOUSAND DOLLARS) (hereinafter referred to as the said sum of money) towards purchase price of the said land AND WHEREAS the Debtor had promised to the Creditor to return the said sum of money within a reasonable time from the date of purchase but upto now the Debtor had failed to return the said sum of money due to certain financial commitment. The Creditor had agreed to give further time to return the said sum of money provided the Debtor enter into this agreement upon the terms and conditions hereinafter appearing:-

WHEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. THAT the Debtor has this day paid the Creditor the sum of \$50.00 (FIFTY DOLLARS) towards the payment and reduction of the said sum of money, the receipt of which the Creditor hereby admits and acknowledges.

2. THAT the balance of \$9,950.00 (NINE THOUSAND NINE HUNDRED AND FIFTY DOLLARS) shall be paid by the Debtor on or before 31st day of December, 1987.

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3. THAT the Debtor shall pay the interest on the said balance of money at the rate of 10% per annum.

4. THAT if the said balance sum of money is not paid to the Creditor on or before 31st day of December, 1987, the Creditor then may institute legal proceedings against the debtor for the payment of the said sum of money.

SIGNED by the said BRIJ RAM)
in my presence and I certify)
that after the contents of)
the above agreement had been) (signed)
read over and explained to him)
in the Hindustani Language)
when he appeared fully to under)
stand the meaning and effect)
of the same)

SOLICITOR, BA, FIJI (signed)

SIGNED by the said SURUJ NARAYAN)
in my presence and I certify)
that after the contents of the)
above agreement had been read) (signed)
over and explained to him in)
the Hindustani Language when he)
appeared fully to understand)
the meaning and effect of the)
same.)

SOLICITOR, BA, FIJI (signed)"

The respondent sued on this written agreement on the basis:

- (a) That the appellant acknowledges the debt of \$10,000.00 (Ten Thousand Dollars) owed to the respondent;
- (b) That the appellant acknowledges the payment of \$50.00 (Fifty Dollars) as part payment;

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- (c) That the appellant undertook to pay the balance of \$9,950:00 (Nine Thousand Nine Hundred and Fifty Dollars) by December 1987.
- (d) That the appellant undertook to pay interest on the balance at the rate of 10% per annum.

The appellant does not deny signing this agreement. However, in his defence, he pleaded that:

- (a) The agreement was not explained to him by the solicitor prior to signing.
- (b) He was under the impression that he was signing a document renouncing his share in the Estate of Rameshwar Prasad, the parties' deceased father.
- (c) That the respondent had not lent him the \$10,000.00 (Ten Thousand Dollars) for the purchase of the property referred to earlier.

In essence, his allegation was that the respondent and the lawyer had misrepresented the nature of the agreement and induced him to sign it. The truth is, he says, the respondent did not lend \$10,000.00 (Ten Thousand Dollars) to him.

Counsel for the appellant complains that the trial judge dealt with the question of whether the agreement was read over

and explained to the appellant but did not decide the question of whether or not the \$10,000.00 (Ten Thousand Dollars) was actually paid to the appellant. The issue of the lack of consideration has been clearly pleaded.

In our view, the two issues are bound up together in the nature of the written agreement. If the agreement was signed by the appellant fully aware of the contents; then the document is fatal to his defence. The document acknowledges the loan and contains an agreement to pay back the loan.

On the other hand, if the appellant was induced by the respondent and the lawyer into signing the document he did not understand, then this agreement cannot be used against him on any of the issues raised at the trial.

The trial Judge stated the nature of the case in the following terms:

"The Plaintiff based his claim on a written agreement (Exh 1) dated 10th June 1985 which recited that the Plaintiff' had contributed \$10000 (ten thousand dollars) (hereinafter referred to as the said sum of money) towards purchase price of the said land" and by which it was agreed that the defendant should pay \$50 at the time of signing and the balance on or before 31/12/87. It was further agreed that the defendant should pay interest on the balance at 10% per annum. The consideration was the granting of further time by the plaintiff for the defendant to pay back the \$10000.

The agreement is perfectly clear. It is properly initialled and it was signed by both parties in the presence of and attested by Mr Raj Kumar, a legal practitioner of Ba.

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It is an acknowledgment of debt and agreement to pay that debt by a certain date."

Appellant's way out of this document was to argue that he was not fully aware of it's contents and that he was induced into signing the document on the mistaken belief that it was a document renouncing his share in his father's estate. In this regard, the trial Judge disbelieved the appellant and believed the respondent and the lawyer who attested the agreement. He found that the appellant signed the document after it's contents were fully explained by the lawyer. The trial Judge did not go on to say in so many words the effect of accepting this document or with respect to consideration whether the sum of \$10,000.00 (Ten Thousand Dollars) had in fact been loaned. He gave judgement in favour of the respondent. However, it can be inferred from the trial Judge's finding that the appellant was well aware of the contents of the written agreement and when he signed it he accepted that he:

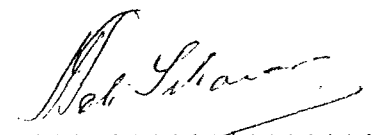
- (1) received the \$10,000.00 (Ten Thousand Dollars);
- (2) paid \$50.00 (Fifty Dollars) as part payment;
- (3) agreed to pay the balance by 31st December 1987; and
- (4) agreed to pay an interest of 10% per annum on the balance.

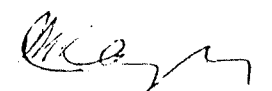
The appellant's submission that the trial judge did not address the issue of consideration must fail.

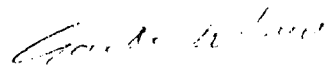
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Further we find no compelling and cogent reasons why we should disturb the trial Judge's findings on facts or credibility. Indeed he had very sound reasons for not believing the appellant's evidence in material respects. For instance in cross examination, the appellant admitted that his affidavit was false (see p 74 of the record).

The formal order of the court will be: appeal is dismissed with costs.


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Sir Moti Tikaram
Vice-President, Fiji Court Appeal


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Sir Mari Kapi CBE
Justice of Appeal


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Mr Justice Gordon Ward
Justice of Appeal