IN THE SUPREME COURT OF FIJI

Civil Action No. 122 of 1957

SADHULAL BHAKSHKAR AND OTHERS Plaintiffs

v.

GRACE MORRISON Defendant

Wood and iron building erected by tenant on registered land—circumstances under which such a building is a fixture and thus a part of the land or a chattel removable at the will of the tenant—Land (Transfer and Registration) Ordinance, Cap. 120 (now Cap. 136), sections 2 (1), 14 and 29 considered.

Held.—The question of whether a building does or does not form part of the freehold depends upon the intention of the parties, in determining which regard must be had to the object, as well as the degree, of annexation.

Cases referred to:—

Reid v. Smith 3 C.D.R., 656.
Holland v. Hodgson L.R. 7 C.P., 328.

H. A. L. Marquardt-Gray for plaintiffs.
H. M. Scott for defendant.

HAMMETT, J. [31st January, 1958]—

The plaintiffs' claim is for an order that the defendant re-erect a wooden building removed by her or, alternatively, for £350 damages for the wrongful removal thereof by the defendant.

Many of the facts are not in dispute. Having heard and seen the witnesses, I have no hesitation in saying that I accept the evidence of the defendant and her witnesses and that I hold the facts to be as follows.

Prior to 1952 one Patrick Maybin owned the land in Suva comprised in Certificate of Title No. 8507. The defendant occupied as a monthly tenant one of the five residential buildings erected on the land. In 1952 certain buildings on the land were destroyed by a hurricane.

With the consent of her landlord after the hurricane in 1952, the defendant, at her own cost, had erected on the land a removable wood and iron building, of about 12′ x 12′ in area, for the use of one of her servants. The building cost £350 to erect. I doubt if any monthly tenant would have agreed to erect at his own expense amounting to £350 any building unless there were some arrangement made for him to be paid compensation or to remove it when the tenancy was terminated.

I am quite satisfied that it was expressly orally agreed between Mr. Maybin and the defendant that this building was the property of the defendant and could, when she wished, be removed by her.

In 1954 Mr. Maybin transferred the title by way of sale to the plaintiffs. Before the sale he told them that the defendant owned this particular servant's quarter and that she would probably want to remove it. The plaintiffs' subsequent conduct, after the sale had been completed, in carrying out repairs to the main buildings but in not repairing this particular servant's quarter, is consistent with the evidence for the defendant that at the time the plaintiffs purchased the land from Mr. Maybin in 1954, they had had express notice of the interest of the defendant in this servant's quarter.

In June 1956, the defendant gave oral notice to the plaintiffs of her intention to give up her tenancy at the end of August 1956, and that she would be removing this servant's quarter.

One Saturday in August 1956, the defendant's brother, at her request, dismantled this servant's quarter preparatory to its removal. The first plaintiff objected and called the police to stop the quarter being dismantled and removed.

The next day, Sunday, the police returned with the first plaintiff and the defendant's brother was told that he could complete the removal of the building, which he then did.

The servant's quarter in question was of small size about 12 feet square of wooden construction with corrugated iron roof, secured with bolts to cement piles let into the ground.

The whole of the wood and iron part of the structure was removable and has been removed, but the cement piles, which are clearly fixed to the land have been left in position.

It is the contention of the plaintiffs that whether they had received notice, expressed or implied, of the defendant's interest in this quarter, such notice was not binding upon them by virtue of section 29 of the Land (Transfer and Registration) Ordinance, then Chapter 120 but now Chapter 136, because it was not registered.

The plaintiffs rely upon the indefeasibility of their title as the registered proprietor of this land under the provisions of section 14 of the same Ordinance, the material part of which reads:

> "The instrument of title of a proprietor issued by the Registrar upon a genuine dealing shall be taken by all courts of law as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to have been a party or on the ground of adverse possession in another for the prescriptive period. A duplicate or certified copy of any registered instrument signed by the Registrar and sealed with his seal of office shall be received in evidence in the same manner as an original."

The definition of land in section 2 (1) of the Ordinance is—

> "'land' means land, messuages, tenements and hereditaments, corporal and incorporal, of every kind and description, or any estate or interest therein, together with all paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries and all trees and timber thereon or thereunder lying or being unless any such are specially excepted:"

From this it is argued that since this servant's quarter was on the land at the time of the transfer of the title to the plaintiffs they thereupon became the absolute and indefeasible owners of it. Any claim which the defendant may have, should, it is submitted, be made against Mr. Maybin who should have expressly excluded this servant's quarter from the title upon the sale to the plaintiffs.

This argument certainly appears at first sight to be attractive and I was rather surprised to be unable to find any report of a case on this matter having come before the Courts in Fiji previously.

The issue in this case appears to be this, " was this small wooden servant's quarter a messuage or tenement and as such did it pass with the land or was it a chattel, resting upon the land which did not pass with the land ".

In the case of *Reid v. Smith*, 3 C.L.R., page 656, the same issue was raised.

In that case the principles which should be applied in determining whether a building resting by its own weight on piers was a chattel or a part of the freehold were thoroughly discussed and examined.

The head note to that case begins:

> " The fact that a house erected by a lessee rests on its own weight upon piers or piles fixed into the ground and is not otherwise affixed to the freehold does not necessarily constitute it a chattel removable at the will of the lessee ".

In *Reid v. Smith* the lessee had covenanted under the terms of his lease to erect on the land a building of not less than £50 in value. In pursuance of that covenant he erected a small wooden building actually affixed to the land. To this he later attached another wooden building and on another part of the land he erected yet another wooden building both of which he used as dwelling houses.

Both these dwelling houses rested by their own weight on piers or piles.

In the course of the judgment of Griffiths, C.J., in *Reid v. Smith*, the following passage from the judgment of Mr. Justice Blackburn in the case *Holland v. Hodgson*, L.R., 7 C.P. 328, is quoted:

> " There is no doubt that the general maxim of the law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz., the degree of annexation and the object of the annexation. When the article in question is no further attached to the land than by its own weight, it is generally to be considered a mere chattel. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land."

In the course of this judgment a number of decisions of the English and American Courts were reviewed.

The conclusion reached was that the question of whether such a building does or does not form part of the freehold depends upon intention, in determining which regard must be had to the object as well as the degree of annexation.

In the case now before me I am quite satisfied that when this building was erected by the defendant—who was a monthly tenant—it was the express intention of both the landlord and the tenant that it should be a removable building. Neither the landlord nor the tenant intended that it should become part of the freehold or that it should be affixed to the freehold in such a manner that it would become a part of the freehold. It was agreed that the building should remain the property of the tenant and that she should remove it if and when she wished to do so. It was constructed with this object in view, and it has in fact been dismantled and removed.

In these circumstances I have no hesitation in holding that this small erection was a chattel which never became a part of the freehold. As such it does not fall within the meaning of the terms " messuages " and " tenements " in the definition of Land in section 2 of the Land (Transfer and Registration) Ordinance.

The defendant was therefore entitled to remove it before the termination of her tenancy and the plaintiffs had no right to prevent its removal.

There will be judgment for the defendant on the claim.