RAMKRISHNA MISSION FIJI (TRUSTEES)

v.

RAMLINGHAM

[COURT OF APPEAL, 1963 (Finlay V.P.; Marsack J.A.; Hammett J.A.), 5th, 19th July]

Civil Jurisdiction

Native land—consent of Trust Board to alienation or dealing—severability of provisions of deed—Native Land Trust Ordinance (Cap. 104) s. 12.

A deed provided that the lessee, the respondent, should hold a lease in trust for the use and benefit of one Sengodan during his life and after his death to the use and benefit of the respondent. A further clause provided that all crops should be the property of Sengodan and he should be entitled to sell them in his own name. The land was subject to s. 12 of the Native Land Trust Ordinance which provides that it shall not be lawful to alienate or deal with the land comprised in any lease without the consent of the Native Land Trust Board, which had not been obtained.

Held.—The second clause was not severable from the rest of the document which had only one object, to grant to Sengodan during his lifetime all the rights of the lessee; the whole was tainted with illegality.

Appeal from judgment of the Supreme Court.

A. D. Patel for the appellant.

Sherani and Pillai for the respondent.

The case is reported only on the point of illegality.

Judgment of the court (in part) [19th July, 1963]—

Turning now to the second contention of appellants, we refer to section 12 of the Native Land Trust Ordinance (Cap. 104) which provides that it shall not be lawful for any lessee under the Ordinance to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board first had and obtained. It is common ground that the Board's consent was not obtained to the Deed of 21st December, 1956. Clause 1 of that Deed provides that the lessee, Ramlingham, should hold the leases and extensions or renewals thereof in trust for the use and benefit of the said Sengodan during his life, and after his death for the use and benefit of Ramlingham.

Clause 2 reads:

> " All the crops growing or to be grown on the lands comprised in the said leases shall be the property of the said Sengodan and he shall be entitled to sell them in his own name without recourse to the said Ramlingham."

In our view Clause 2 merely amounts to a clarification of some of the rights acquired by Sengodan under Clause 1. Counsel endeavoured to differentiate the rights acquired under Clause 1 from those under Clause 2 by submitting that what was granted under Clause 1 was an interest in land, but under Clause 2 an interest in chattels or at least *in fructus industriales*. We are unable to accept this contention.

In the absence of express provision to the contrary, Clause 1 would entitle the grantee to the benefits both of the land and of what was growing on the land. The Deed had one object and one object only, which is set out in Clause 1: To grant to Sengodan during his lifetime all the rights of the lessee under the leases concerned. These rights naturally included the use of the land and what was in it. That being so, we are of the opinion that Clause 2 of the Deed is not severable from the rest of the document; and Clause 2 must therefore be tainted with the illegality attaching to Clause 1. For these reasons the appeal is dismissed. Appellant will pay the respondent his taxed costs of the appeal.

Appeal dismissed.

Solicitors for the appellant: *A. D. Patel* & *Co.*

Solicitors for the respondent: *Sherani* & *Co.*