

CHOW CHIU LAN

A

v.

BASDEO SHARMA

[SUPREME COURT, 1964 (Knox-Mawer P.J.), 11th September, 2nd
October]

B

Appellate Jurisdiction

Crown Lands—protected lease—consent of Director of Lands to assignment refused—false certificate on application—illegality—Crown Lands Ordinance (Cap. 138) ss.15(1), 41—Crown Lands (Leases and Licences) Regulations, reg. 34.
Contract—illegality—assignment of protected lease—false certificate by both parties—refusal of assistance of court to plaintiff—Crown Lands Ordinance (Cap. 138) ss.15(1), 41.

C

The appellant paid to the respondent £120 on account of a total price of £500 agreed to be paid in respect of the proposed purchase of the respondent's Crown Lease. The consent of the Director of Lands was applied for under section 15 (1) of the Crown Lands Ordinance; the application form, the contents of which were certified by both parties to be correct, contained the false statement that the consideration to be paid was £50. The Director of Lands having refused his consent, the appellant brought an action in the Magistrate's Court for the recovery of the £120 paid by him. The magistrate held that the transaction was tainted with illegality in that section 41 of the Crown Lands Ordinance rendered it an offence to produce, in relation to anything required to be done by the Ordinance, a false certificate, knowing the same to be false in any material particular.

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Held: (Upholding the judgment of the magistrate) That the magistrate was entitled to conclude upon the whole of the evidence that the Crown Lease in question was one to which section 15(1) of the Crown Lands Ordinance applied, despite the fact that the lease was not formally exhibited.

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Appeal from a judgment of the Magistrate's Court.

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R. A. Kearsley for the appellant.

T. Madhoji for the respondent.

The facts sufficiently appear from the judgment.

KNOX-MAWER P.J.: [2nd October, 1964]—

H

This is an appeal against a decision of the Magistrate's Court of the First Class, Nausori, in Civil Action No. 134 of 1964.

The Appellant sued the Respondent for the sum of £137.10.0. £17.10.0 of this claim comprised rent paid by the Appellant to the Crown on behalf of the Respondent. As for the remaining £120, the Appellant claimed that he and the Respondent had entered into an agreement for the transfer to the Appellant of the Respondent's interest in Crown Lease No. 3312. The purchase price was to be £500, of which the Appellant advanced the sum of £120. Both parties signed an Application Form (Exhibit B) to the Director of Lands for the latter's consent to the transfer, such consent being required under section 15(1) of the Crown Lands Ordinance, (Cap. 138). Section 15(1) of Cap. 138 reads as follows :—

“Whenever in any lease under this Ordinance there has been inserted the following clause :—

‘This lease is a protected lease under the provisions of the Crown Lands Ordinance.’

(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.”

However, the Director's consent was not forthcoming and so the transfer did not take place. The Respondent subsequently refused to refund the £120 to the Appellant, hence the Appellant's present claim for its recovery.

In his affidavit of defence to this claim, the Respondent pleaded illegality. It was common ground, at the hearing in the Court below, that upon the approved Application Form (Exhibit B), the contents of which were certified by both parties to be correct, the “consideration to be paid” was stated to be £50. This was, of course, false in that the agreed consideration was £500.

Section 41 of the Crown Lands Ordinance (Cap. 138) provides as follows :—

“41. Any person who makes a false declaration in relation to any matter or thing required to be done by this Ordinance, or by any regulation made thereunder, or who produces any false declaration or certificate, knowing the same to be false in any material particular, shall be guilty of an offence against this Ordinance.”

Since the Ordinance (Section 15(1)) required the Director of Lands' consent to the transfer, and in seeking that consent the parties had made a false declaration (within section 41), the learned trial Magistrate upheld the respondent's plea that the transaction was tainted with illegality. The Court could not, for this reason, assist the Appellant to recover his £120 and so this portion of the Appellant's claim must be rejected. Judgment was accordingly entered for the Appellant for the sum of £17.10.0 (which the Magistrate found to be due) but no order was made for costs.

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Learned Counsel for the Appellant has argued that because the Crown Lease itself was not formally exhibited before the lower Court (although the Respondent's Counsel offered to produce a photostat copy if granted an adjournment), the learned trial Magistrate was not entitled to say that section 15(1) of Cap. 138 was applicable thereto. In my view, the Magistrate was entitled to conclude upon the whole of the evidence that section 15(1) did apply. Clearly Crown Lease No. 3312, like any other Crown Lease, must be in the form prescribed by Regulation 34 of the Crown Lands (Leases and Licences) Regulations (Form 2, Schedule A). Moreover, it was because both parties acknowledged the operation of section 15(1) that they submitted the Application (Form B) to the Director of Lands in the first place.

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Upon the finding of the lower Court in this case, there is nothing in the grounds of appeal urged on behalf of the Appellant to justify my reversing the Magistrate's decision as regards the £120. On the other hand, I do think that, since the Appellant succeeded in his claim for the £17.10.0, he should have been awarded his costs in the lower Court. To this extent, therefore, this appeal succeeds. The order as to costs in the Court below is reversed. In respect of the proceedings in the Magistrate's Court, the Appellant is awarded 25 guineas costs plus disbursements. In addition, I award the Appellant the sum of 15 guineas costs in this Court.

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Appeal dismissed, except as to order for costs.