

A
RATTAN

v.

RAM SWAROOP

B [SUPREME COURT, 1964 (Knox-Mawer Ag. P.J.), 17th January, 4th
February].

Appellate Jurisdiction

Evidence—extrinsic evidence inadmissible to contradict document—fraud not
pleaded.

C Evidence—time for ruling on admissibility—omission by counsel to object when
tendered.

D The appellant executed in favour of the respondent an assignment
of a tenancy, in which the consideration was expressed to be the
sum of £200-13-6. The respondent having seized certain goods of
the appellant under the powers conferred by a Bill of Sale from the
appellant to the respondent, the appellant brought an action against
the respondent alleging that the seizure was unlawful. At the hear-
ing the appellant, without objection from counsel for the respondent,
gave evidence that the true consideration for the assignment of the
tenancy was the sum of £600 part of which was to be credited against
the appellant's indebtedness to the respondent. In his judgment the
magistrate held that he must disregard that part of the evidence of
E the appellant which supported his contention that the true consider-
ation was not stated in the assignment.

Held: 1. In the absence of any pleading of fraud the magistrate
was correct in holding that none of the exceptions to the extrinsic
evidence rule applied.

F 2. If counsel for the respondent had objected, as he should have
done, to the admissibility of the evidence when it was tendered, the
question would have been settled at that stage and an application
for leave to amend the statement of claim by adding an allegation
of fraud, would no doubt have been made. Leave to amend would
therefore be given and the case remitted to the magistrate for trial
of the issue of fraud.

G Cases referred to: *Turner v. Forwood* [1951] 1 All E.R. 746; *Clifford
v. Turrell* (1841) 1 Y. & C. Ch.Cas. 138; 62 E.R. 826; affd. [1845] 14
L.J.Ch. 390; *Frith v. Frith* [1906] A.C. 254; 94 L.T. 383.

Appeal from judgment of a Magistrate's Court.

H D. S. Sharma for the appellant.

R. I. Kapadia for the respondent.

KNOX-MAWER Ag. P.J. [4th February, 1964]—

The appellant, being indebted to the respondent, executed, on 13th January, 1960, in favour of the respondent, a Bill of Sale over certain of his goods and chattels. On 3rd January, 1962, the appellant also executed a Crop Lien in favour of the respondent over his sugar cane, growing or to be grown on his leasehold land known as Lot 17 Catholic Mission Land, the appellant acknowledging therein that £426.5.6 was then due and owing by him to the respondent. (This Crop Lien is not among the papers submitted to this Court, but the details relating thereto are agreed in the pleadings.) On the 3rd January, 1962, the appellant assigned his leasehold interest (Lot 17 Catholic Mission Land) to the respondent. A memorandum of assignment was endorsed on the back of the "lease" as follows:

"IN CONSIDERATION of the sum of TWO HUNDRED POUNDS THIRTEEN SHILLINGS AND SIX PENCE (£200.13.6) I RATTAN Father's name Krishna of Namata, in the district of Nadroga, Cultivator, HEREBY TRANSFER ASSIGN AND SET OVER unto Ram Sarup Father's name Chaturi of Namata in the district of Nadroga, Cultivator all my right title interest and estate in the within Agreement to Lease made between the Trustees of the Roman Catholic Mission in Fiji and me, concerning Lot 17 comprised in C.T. 6827.

Dated at Nadi this 3rd December, 1962.

SIGNED by the said RATTAN after the contents hereof had been read over and explained to him in the Hindustani language and he appeared fully to understand the meaning and the effect thereof:—

(Sgd.)
RATTAN

(Sgd.) K. Jamnadas
SOLICITOR, NADI.

I RAM SARUP Father's name Chaturi of Namata, Nadroga Cultivator hereby accept the above.

SIGNED by the said Ram Sarup after the contents hereof had been read over and explained to him in the Hindustani language and he appeared fully to understand the meaning and the effect thereof:

L.T.M. Ram Sarup
X

(Sgd.) K. Jamnadas,
SOLICITOR, NADI.

Transfer agreed to. 19.1.63.

(Sgd.) J. Clerkin,
for the Trustees of the
Roman Catholic Mission in Fiji."

In 1963, sometime prior to the issue of the writ in this case (the date does not appear on the record), the respondent seized the appellant's goods and chattels secured by the Bill of Sale, claiming that the appellant owed him thereunder the sum of £293.16.3. The appellant thereupon instituted these proceedings.

By his statement of claim the appellant alleges that he had in fact assigned his leasehold interest to the respondent for the sum of £600 made up as follows:

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- (a) £200.13.0. being the sum owed by the appellant to his lessor (the Roman Catholic Mission) which the respondent undertook to pay, and
 - (b) the balance of £399.7.0 being credited against the sum of £425.6.6. at that time owing by the appellant to the respondent. Accordingly, the appellant maintains, when, to this sum of £399.7.0. there were added the cane payments subsequently received by the respondent under the Crop Lien, he was no longer indebted to the respondent.
- B

Upon this basis, the appellant seeks, by his prayer, the following heads of relief:

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- (a) A declaration that there are no moneys due and owing by the Plaintiff to the Defendant under Bill of Sale Registered No. 60/75 and collateral Crop Lien No. 62/55;
 - (b) An order that the Defendant forthwith discharge the said Bill of Sale and the Crop Lien;
 - (c) An order for the payment of moneys due by the Defendant to the Plaintiff;
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- (d) Damages for unlawful seizure by the Defendant of the Plaintiff's goods and chattels under the said Bill of Sale amounting to £50.0.0.

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By his defence the respondent contends that the agreed purchase price for the appellant's leasehold interest was £200.13.0 (as stated (with the additional sixpence) in the memorandum set out above) and not £600. The respondent denied that he had at any time agreed to credit the appellant with the sum of £399.7.0.

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At the trial, the appellant gave evidence in support of his contention that the real purchase price for the assignment was £600, and not £200.13.0. as recited in the memorandum. It appears from the record that the respondent's counsel did not object to the admissibility of this evidence at the time, which was duly recorded. After the respondent had given his evidence, denying the appellant's story, the hearing concluded.

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In his judgment, the learned trial Magistrate held in effect that he must disregard all that portion of the appellant's testimony which related to his contention that £200.13.0. was not the true consideration for the assignment, in accordance with the rule of evidence that where a transaction has been recorded in writing, either by requirement of law or agreement of the parties, extrinsic evidence to contradict, vary, add to or subtract from the terms of the document is generally inadmissible. There are, of course, exceptions to this rule, but I agree with the learned Senior Magistrate that as the case now stands, having regard to the pleadings, none of these exceptions apply. The point is, of course, not without difficulty. Mr. Sharma for the appellant, has referred me to the case of *Turner v. Forwood*

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and anor. [1951] 1 All E.R. 746, but while I agree that Lord Goddard's judgment in that case seems to be couched in somewhat wide terms, it is to be noted that the other two judges (Singleton and Denning L.J.) were more circumspect. Certainly I do not think that that decision so extends the law as laid down by the earlier authorities *Cufford v. Turrell* (1841) 1 Y. & C.Ch. Cas. 138 and *Frith v. Frith* [1906] A.C. 254, as to render this essentially "extrinsic" evidence by the appellant receivable upon any ground other than fraud. Fraud, however, as the learned Magistrate pointed out, was not pleaded by the appellant.

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B

Accordingly I would be minded to dismiss this appeal but for the following reason. When the appellant's counsel began to lead this "extrinsic" evidence, it was then for the respondent's counsel to object. As already pointed out, he did not do so. Had he done this, the Court would, after hearing argument, have ruled that such evidence could not, as the case then stood, be admitted. No doubt counsel for the appellant would thereupon have sought leave to amend his statement of claim by adding a specific allegation of fraud. This could fairly have been permitted at that stage, upon terms. In these circumstances, it seems to me that it would be more consistent with the ends of justice if I now so order as to place the parties in that position. The judgment of the lower Court is therefore set aside. The case is remitted to the trial Magistrate. The appellant is granted leave to amend his statement of claim by pleading fraud. In reply the respondent will be at liberty to file an amended defence. The issue of fraud will then be tried by the lower Court. The parties may adduce such further evidence as they think necessary and/or they may rely on the learned trial Magistrate's evaluation of their testimony as already recorded.

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D

The respondent is awarded all costs incurred to date in the lower Court. The costs of this appeal will be costs in the cause.

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Appeal allowed: leave to amend granted: remitted to Magistrate's Court.