

SHYAM LAL

v.

ERIC MARTIN SCHULTZ

[COURT OF APPEAL, 1972 (Gould V.P., Marsack J.A., Spring J.A.),
Civil Jurisdiction

12th, 30th October]

Land—ejectment—summary procedure—basic facts not in dispute—procedure appropriate—Land Transfer Act 1971, ss.39, 169.

Law practitioners—solicitors—acting for both parties in preparation of agreement for sale and purchase—litigation ensuing some fourteen years later—no duty precluding solicitor from acting for one of the parties in the litigation.

A registered proprietor of land under the Land Transfer Act, 1971, brought summary proceedings under section 169 of that Act for the ejectment from a portion of the land of the appellant, whose claim to that portion was based upon an agreement for sale and purchase from a person who had previously been joint owner of the land with the respondent. None of the basic facts were in dispute. The agreement under which the appellant claimed was drawn by the solicitor who appeared for the respondent in the Supreme Court; though in that matter he had acted for both parties, he had not acted for the appellant since the agreement was drawn in 1957.

Held: 1. The case fell within the ambit of section 169 of the Land Transfer Act, 1971, and the basic facts not being in dispute, the proceedings were rightly entertained by the learned judge under that section. *Per Gould V.P.*: The procedure in chambers under section 169 is not appropriate when there are complicated questions of fact (particularly if there are allegations of fraud) to be investigated.

2. In the circumstances of the case there was no duty owed to the appellant by the solicitor who prepared the agreement, which disqualified him from acting for the respondent.

Appeal from an order for ejectment made by the Supreme Court under section 169 of the Land Transfer Act, 1971.

K. C. Ramrakha for the appellant.

R. I. Kapadia for the respondent.

The facts sufficiently appear from the judgment of Marsack J.A.

30th October 1972

The following judgments were read:

MARSACK J.A.:

This is an appeal against an order made by Tuivaga J. on the 9th May, 1972, ordering the appellant to give up vacant possession of certain lands to the respondent.

A The basic facts are not in dispute. The respondent is the registered proprietor under a Certificate of Title issued under the Land Transfer Act, 1971, of a freehold property in Suva comprising 7 acres, 2 roods, 12 perches. This land was purchased by the respondent from Buturu Chanderman and Tasir Khan, free of encumbrances, by transfer dated 3rd September, 1965. The appellant, by agreement dated 11th March, 1957, agreed to purchase from Buturu Chanderman, one of the joint owners, an area approximately 32 perches, being part of the land in dispute. The purchase price was £650 of which £50 was paid as a deposit and the balance was payable at £5 per month. The total amount paid by the appellant was approximately £200. The appellant entered in possession of the 32 perches in 1957 and has remained in possession until the present time; he has also erected on it two small buildings. The respondent on 29th June, 1971, gave the appellant formal notice to quit the land, and upon his failure to do so proceeded in the Supreme Court claiming an order for possession. An order was made by Tuivaga J. on the 9th May, 1972 that vacant possession be given by the appellant to the respondent. It is against that order that this appeal is brought.

Three grounds of appeal were set out in the notice of appeal and were argued before this Court. These grounds read :—

- D “1. The learned trial Judge ought to have upheld a submission made by the appellant’s counsel that Messrs. Munro, Warren, Leys and Kermode, who drew the original sale and purchase agreement on which the appellant relied ought not to have acted against appellant in favour of the respondent.
- E 2. The learned trial Judge erred in deciding the issues raised by the appellant in summary proceedings and ought to have dismissed the application.
- F 3. The appellant had established in any event a prima facie right to stay on the land in question, and he ought not to have ejected.”

G On the first ground of appeal Mr. Ramrakha referred to the fact that the original agreement for sale from Buturu to the appellant was drawn by Messrs. Munro, Warren, Leys and Kermode; and he contended that by acting, in these present proceedings, against one of the parties to that agreement, Mr. Kermode was breaking the rule that counsel ought not to accept a brief against any party in a case where acceptance of the brief would involve a conflict of interests. When the point was raised in the court below, Mr. Kermode stated that he had not acted for the appellant since 1957, and submitted that no conflict of interest was involved. In the present case, I am unable to find any duty owed by Mr. Kermode to the appellant which should disqualify him from appearing for the respondent in the present proceedings. I think that the matter comes within the principle set out in *36 Halsbury’s Laws of England* (3rd Ed.), Para. 133 :—

“There is, however, no general rule prohibiting a solicitor who has acted in a particular matter for one of the parties from acting subse-

quently in the same matter for the opposite party, though where a solicitor owes a duty to some one other than a particular client, which conflicts with his duty to that client, he is not thereby relieved of any duty to the client." A

Accordingly, I can find no merit on this ground of appeal.

On the second ground Mr. Ramrakha's argument was to the effect that substantial issues of fact were involved, and these could not have been fully ascertained and decided in summary proceedings. In Mr. Ramrakha's submission, a writ should have been issued and a full hearing held as in Supreme Court actions. In this connection it is relevant to note that no objection to the form of the proceedings was taken at the hearing before Tuivaga J. In any event I am satisfied that the case falls squarely within the ambit of Section 169 of the Land Transfer Act, 1971, which provides that the registered proprietor of land may summon any person in possession of the land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant. As I have said, the basic facts were not in dispute; and nothing has been put before this Court to show that any fact relevant to the matter in dispute was not brought to the notice of the Judge before he made the order appealed against. Consequently, in my view, the proceedings were correctly brought under Section 169 and no reason has been shown for upsetting the proceedings on that ground. B C D

The third ground of appeal, in my opinion, can have no validity in view of the provisions of Section 39 of the Land Transfer Act. The only circumstance in which the title of the respondent could be impeached would be on proof of fraud, that is to say, fraud on the part of the registered proprietor. There is no evidence whatever that respondent had acquired his registered title to the land through fraud; and in fact no allegation of fraud has been made against him. That being so, I would hold that the title of the respondent to the land is not subject to any interest, equitable or otherwise, of the appellant. E

For these reasons, I would dismiss the appeal and would order that the appellant pay to the respondent his costs of the appeal. In view of all the circumstances, I feel that a reasonable time should be allowed to the appellant to vacate the land, and I would accordingly make provision that the order for possession be held in the Court office until 30th November, 1972. F

SPRING J.A.

I have read the judgment of my learned brother, Marsack, J.A., and concur in his reasoning and conclusion and have nothing to add. G

GOULD V.P.

I have had the advantage of reading the judgment of Marsack J.A. and am fully in agreement with it. I would only add, on the argument that the procedure authorised by section 169 of the Land Transfer Act, 1971, was not appropriate, that I am in sympathy with the proposition that complicated questions of fact (particularly where there are allegations of fraud) cannot adequately be investigated and dealt with on a summary H

A proceeding in Chambers. The present case, however, involved virtually no contested relevant fact and the learned judge in my opinion rightly entertained and dealt with it.

All members of the court being in agreement, the appeal is dismissed with costs and with the further order suggested in the judgment of Marsack J.A.

Appeal dismissed.