SHIVA RAO A

v.

NATIVE LAND TRUST BOARD & ANOR.

Present at the Hearing: B

Lord Bridge of Harwich
Lord Templeman
Lord Mackay of Clashfern
Lord Oliver of Aylmerton
Lord Goff of Chieveley

(Delivered by Lord Bridge of Harwich) (19th February 1986) C

(Agricultural Landlord& Tenant Act (Cap. 270)—S. 4(1) even there is occupancy landlord may discharge onus such occupancy was without his consent—s.4(2)—payment alleged to have been made to be presumed as rent—but only "in the absence of proof of the contrary".)

Appeal against a decision of the Court of Appeal which had dismissed and appeal from the Supreme Court by Shiva Rao (s/o Subba Rao) (appellant) (Plaintiff) who had claimed that he was an occupant of land, apparently Native Land, referred to as 4/4/231 and a tenant of the land. D

It appears that the plaintiff relied primarily for his claim of tenancy on occupation of the land and alternatively alleged payment of rent to the Bank of New Zealand and the Post Office who in fact do receive money on behalf of the Native Land Trust Board, (respondent) (defendant). E

The plaintiff as to his claim of tenancy arising out of occupation relied on the Agricultural Landlord and Tenant Act (Cap. 270) (ALTA) s.4(1) which provided—

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4(1) "Where a person is in occupation of and is cultivating an agricultural holding and such occupation and cultivation has continued before or after the commencement of this Act for a period of not less than three years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent, and if the landlord fails to satisfy such onus of proof, a tenancy shall be presumed to exist under the provisions of this Act." G

(2) "Where payment in money or in kind to a landlord by a person occupying any of the land of such landlord is proved, such payment shall, in the absence of proof to the contrary be presumed to be rent."

A The plaintiff sought to have the courts accept his tenancy in an alternative way i.e. by reference to his payments of $28 annually for some years, duly acknowledged by receipts which were in evidence and his evidence that someone (presumably in authority) had agreed to his requests for a tenancy.

The plaintiff had a formidable difficulty in the findings of the Judge at first instance who found him totally lacking in credibility and his claim fraudulent.

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As to s.4(1), the trial Judge held that he had not been in occupation. The Court of Appeal finding would, because of a different view it had of what constituted occupation, held he had been in occupation. For present purposes their Lordships assumed he was in occupation.

C But their Lordships pointed out that there were clear findings of fact by the trial Judge and Court of Appeal that the defendants had discharged the onus s. 4(1) required i.e. that the plaintiff's occupation was without the consent of the defendants.

Their Lordships also found s. 4(2) of no assistance to the plaintiff. It created no presumption of the effect of payment of rent between one claiming and one disputD ing a tenancy.

All s. 4(2) did was to create a rebuttable presumption as to the character of certain payments. The evidence that the sums paid which he claimed to be rent which had been agreed with an employee of the Native Land Trust Board was not accepted by the trial Judge. The Bank and Post Office were "not even rent collectors but simply depositories" who collected money and provided a receipt without conferring any E further significance on the payment. The words on the receipts in evidence made it clear that payments did not create or recognise a tenancy. There was no evidence that the payments were received or recorded by the Native Land Trust Board as rent.

Appeal dismissed.

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Judgment

The appellant before the Board claims as plaintiff in an action against the two respondents, the Native Land Trust Board and the Native Land Development CorG poration Limited, as the pleadings were eventually amended, a declaration that the plaintiff was the lessee and/or tenant of the first respondent in respect of certain native land, comprised in the Native Land Trust Board file No. 4/4/231, known as Drasa and having an area of 2 acres 3 roods and 18 perches. There were, in addition, claims for damages and other relief. The hearing of the action took place in the Supreme Court of Fiji before Mr Justice Williams on some four days between 9th July and 15th October 1981. The judge gave judgment on 6th November 1981 dismissing H the appellant's claim with costs. An appeal to the Court of Appeal was heard on 13th and 14th July 1982 and was dismissed on 30th July 1982 with costs. The appellant now appeals to this Board.

It is a somewhat remarkable appeal in that the appellant confronts at the outset what might seem to be the insuperable difficulty that both courts below have declared that his entire claim is fraudulent. The learned judge said this in two crucial passages:— A

> "In my view the Statement of Claim in its reference to the amount of damages is a fabrication as it is in regard to the alleged destruction of axles and discs and fencing wire. It is indicative of the plaintiff's claim generally. He is lacking in credibility to the extent that I would not accept his evidence on any material aspect of his claim unless it was supported by some persuasive evidence from an independent source. I am guite satisfied that he would not hesitate to tell lies and cheat in order to establish a case." B

Later the learned judge said:—

> "I have not the slightest doubt whatever that Mr Qetaki who appeared for the Native Land Trust Board has rightly submitted that the plaintiff had devised a scheme hoping to beat the Native Land Trust Board statutory system of creating and granting tenancies of Native Land. He has endeavoured to hoodwink responsible officers into believing that someone had 'somewhere along the line' agreed to one of his requests for a tenancy of 4/4/231. I regard his attempts as unscrupulous and based on cheating and deception. He is a witness and claimant without a scrap of acceptable credibility." C D

Notwithstanding the difficulty with which those findings appear to confront him, counsel for the appellant has sought to persuade this Board that it should say that the plaintiff's fraudulent scheme ought to succeed, and that as a matter of Fiji law, despite those findings, the court was obliged to hold that his claim to be entitled to the tenancy of the subject land was made out.

Reliance is placed primarily on section 4(1) of the (Fiji) Agricultural Landlord and Tenant Act (Cap. 270). That sub-section provides:— E

> "Where a person is in occupation of and is cultivating an agricultural holding and such occupation and cultivation has continued before or after the commencement of this Act for a period of not less than three years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent, and if the landlord fails to satisfy such onus of proof, a tenancy shall be presumed to exist under the provisions of this Act." F

The only difference of view between the learned trial judge and the Court of Appeal was as to whether, on the primary facts which the learned judge had found, the appellant ought properly to be held to have been in occupation of the subject land. The learned judge held that he had not been in occupation. The Court of Appeal, taking a different view of what constituted occupation for this purpose, held that he had. Their Lordships will assume in favour of the appellant on this issue, on which it is unnecessary for them to express an opinion, that the Court of Appeal were right. Nevertheless there are perfectly clear concurrent findings of fact by the learned judge and by the Court of Appeal that the respondents had discharged the onus of proof which section 4(1) casts upon them that the appellant's occupation of the subject land was without the consent of the respondents. There was abundant evidence to support those findings of fact. No question of law arises in relation to G H

them and, as is well known, this Board will only in the rarest cases reverse concurrent findings of fact of the two courts below when such findings are challenged on appeal before the Board. This is not a case where there is the smallest ground to doubt that the concurrent findings of fact were fully justified.

The alternative way in which the case is sought to be argued for the appellant rests upon this background of facts. Over a substantial period of years the appellant had, year by year, paid either to the local Post Office or to a branch of the Bank of New Zealand a sum of $28.00 per year which he purported to be paying as rent for the subject land. The argument for the appellant is that those payments of rent duly acknowledged by receipts, which were documents in evidence at the trial, entitled the appellant without more to say that his claim to a tenancy was established. Reliance is based, in the first instance, on section 4(2) of the Agricultural Landlord and Tenant Act. That sub-section provides:—

> "Where payment in money or in kind to a landlord by a person occupying any of the land of such landlord is proved, such payment shall, in the absence of proof to the contrary, be presumed to be rent."

That sub-section, in their Lordships' judgment, is of no assistance to the appellant in this case. By contrast with sub-section (1), it creates no presumption as regards the effect of payment of rent in relation to the creation of a tenancy between one who claims to be tenant and one who disputes that he was such. All that sub-section (2) does is to create a rebuttable presumption as to the character of certain payments. The evidence by the appellant of payment of an annual sum of $28.00, which he claimed to be the rent which had been agreed with an employee of the respondent Board, was not accepted by the trial judge. The question whether these payments created a tenancy in the appellant's favour is a question to be determined on well established principles of common law. The learned judge dealt with this matter comprehensively in his judgment. Having cited the payments by the appellant to the Bank of New Zealand and the Post Office, he went on to say that these bodies "are not even rent-collectors but simply depositories who provide a receipt as proof of payment entering therein the particulars provided by the payer". A copy of the stamps on the receipts, which was put before their Lordships at the conclusion of the argument, supports that view of the matter to this extent that the receipts are stamped with a box containing the printed words—"This amount is received only for transmission to the Native Land Trust Board and is subject to acceptance by the Board. This receipt does not create nor recognise a tenancy". The learned judge went on—

> ".....in the circumstances the receipts standing alone cannot be regarded as proof of the existence of any tenancy in respect of which payment purports to be made. If that were so the Native Land Trust Board could quickly be thrown into chaos by devious schemes invented by individuals wishing to lay claim to land so as to create an impression that a lease exists. The Bank of New Zealand at Tavua obviously has no idea as to what leases exist in that area nor has the sub-accountant at the Post Office. They can only record, for the information of the Native Land Trust Board, that a person named in the receipt paid the sum shown therein and alleged that it was in respect of some tenancy described by the payer.

The Native Land Trust Board is a huge organisation in Fiji terms being the landlord of almost the whole of Fiji. Its tenants are scattered all over the islands—and the establishment of persons and bodies authorised to receive

rents is a convenience for tenants. Obviously such representatives have no authority to create tenancies, they cannot acknowledge payment of a sum of money and record the payer's comments. Naturally in the case of an existing tenancy the receipt is evidence of payment where the Native Land Trust Board complains that payment has not been made. But where no written agreement or proof of the grant of a tenancy is available, acceptance of payment by the Bank of New Zealand or such like agent cannot be treated as the Native Land Trust Board's acknowledgment of the existence of a tenancy."

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The learned judge continued—

"Where is the evidence that the plaintiff's annual payments of $28.00 were received and recorded by the Native land Trust Board as rent for land referred to as 4/4/231, Tavua?

He proceeded to examine the evidence, particularly the documentary evidence, at length and came to the conclusion that the answer to the question which he had posed was that there was no such evidence. The Court of Appeal affirmed the learned judge's view that in the circumstances there was here, applying ordinary, well recognised common law principles, no basis for an inference that the payments of rent and the receipts given by the depositories for the payments of what purported to be rent by the appellant indicated any intention on the part of the Native Land Trust Board to create a tenancy.

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This appeal has always been hopeless and unarguable from the start and their Lordships will humbly advise Her Majesty that it ought to be dismissed. The appellant must pay the respondents' costs.

Appeal dismissed.