

Civil Jurisdiction

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Action No. 226 of 1977

Between:

YASHWANT SINGH

Plaintiff

and

RAM NARAYAN SINGH

Defendant

Mr. F.M.K. Sherani for the Plaintiff.

Mr. P. Knight for the Defendant.

JUDGMENT

In this action the plaintiff seeks an order that the Caveat No. 1485/71 which was registered by the defendant on 5th July 1977 against CT.6050 comprising 1 rood 7.7 perches being part of Lot 1 at DP Plan 743 and situate at 20 Marion Street Suva (hereinafter called "the said property") be withdrawn and a further order that the defendant vacate and give vacant possession of the said property to the plaintiff.

The defendant opposes the action on the ground that there was a clear understanding between the parties that the said property was purchased on behalf of the defendant and defendant counterclaims for a declaration that the property is held in trust by the plaintiff for the defendant and an order that the said property be transferred to the defendant free from all encumbrances.

At the trial of the action and counterclaim the plaintiff did not give evidence in support of the action. The defendant gave evidence in which he opposed the action and alleged in his counterclaim that the said property was bought for him.

I found the defendant to be an impressive and reliable witness whose testimony I feel I can safely accept.

The evidence adduced before me is largely uncontroverted and I accept the following facts to be established.

The defendant and plaintiff are father and son, the former is sixty three years of age and the latter is about forty one and is the eldest among six children. Plaintiff is a qualified chartered accountant although his present occupation is unknown. He is now living somewhere in the United States. Defendant last saw him in October 1979 and has had no communication with him ever since.

In 1964 defendant was lecturer at Nasinu Training College where he was provided with Government quarters. Plaintiff who was unmarried was living with him at the time. In the beginning of 1965 defendant had to vacate his Government quarters at Nasinu as he was preparing to leave for Australia on a scholarship. He rented a house at Samabula at £21 per month where the family lived. Plaintiff continued to live with the family. Defendant did not have a house of his own in Suva and was anxious to buy one. He set about looking around for a suitable property. He saw an advertisement in the newspapers calling for tenders on two adjoining properties at Marion Street, one of which was a vacant block and the other already had a house built on it. The properties were registered under Certificates of Title 4025 and 6050 respectively. The advertisement was inserted by Messrs. Munro, Warren, Leys and Company.

Defendant and his wife and the plaintiff went and inspected the properties and following a discussion it was decided that they should tender for the two properties on the understanding that the defendant would own the block with the house on it, the said property (CT.6050) and the plaintiff would get the other property (CT.4025).

After this discussion the defendant went to Bank of New South Wales where he maintained a cheque account and gave

authority (Ex.1) for his son, the plaintiff, to draw money on his bank account to pay towards the purchase of the said properties. This was necessary as he was then about to leave for Australia. Plaintiff was to arrange for a loan on their behalf to pay for the balance of the purchase price for the two properties. No actual price for the tender was discussed. Defendant left Fiji on 20th February for Australia and was away for ten months.

From Australia defendant wrote to plaintiff inquiring about the properties. In June 1965 he received a letter (Exhibit 2) from the plaintiff of which the first paragraph reads:

"I am sorry not to have replied to your letter earlier. In the past few months I have been extremely busy. Everybody is quite well at home. It cost me extra £300 to get the house repaired and a garage built. The bank gave me an advance of £1,000 and I took £1,100 from your savings account and I paid the balance. The cost was £3,000 plus £100 for transfer and apportionment of rates, insurance etc. I am acting as an assessor from 1st April and get 95% difference between my present salary and minimum of assessor's salary which is £1,100. This has enabled me to take over what otherwise could have been a difficult period as far as finances go. I have paid all your insurances etc. and am afraid that I have not been able to save any of your monthly salary, which is about £30 after all deductions."

That was the first time defendant came to know that the price of both properties was £3,000. Defendant later learned in a letter from his daughter that the family had moved to the said property in Marion Street. Defendant did not know at the time in whose name the said property was registered. During defendant's absence from Fiji plaintiff on 25th March 1965 withdrew from defendant's Bank of New South Wales passbook (Exhibit 3) the sum of £1,100 and £20 respectively. This was done in accordance with the authority given to the plaintiff by the defendant. Plaintiff also withdrew monies from

defendant's current account with Bank of New South Wales on 5th March 1965 £21 and on 18th November 1965 £11 (see bank statements Exhibit 4). There were several other withdrawals by the plaintiff of varying amounts (see Exhibit 5A and Exhibit 5B).

When defendant returned to Fiji his wife, the plaintiff, his daughter and two sons were living in the said property and he joined them there. At all material times defendant regarded the said property as his because of this understanding between him and the plaintiff as to the division of the two properties. Furthermore in the prevailing circumstances at the time there was no reason for defendant to think otherwise than that the house did in fact belong to him. Acting under such belief of ownership defendant set about making improvements to the said property. He bought paints and painted the entire house. He repaired the door. Plaintiff stood by and did not protest when defendant carried out this work on the house on the said property.

In early December 1975 defendant was still on holiday and decided to go to New Zealand with his wife and a younger son. Whilst at Nadi to catch a plane out plaintiff rang him up and told him that he would be going to London on a scholarship before Christmas. Defendant and his wife and son returned from New Zealand in February 1966. On his return his daughter gave him a note from the plaintiff (Exhibit 6) containing instructions for payments of insurance premiums on the house and city rates. Defendant carried out all the instructions set out in the note.

Plaintiff was in London from 1966 to February 1970. During that period defendant did much work on the house, repairing floors, putting in new wooden shutters, new roof on the porch, replacing a few sheets of old corrugated iron on the roof, replacing gutterings and down pipes, repairing damaged wall panels and repainting whole house. Also throughout this period defendant kept paying the city rates and other

expenses on both properties (CT.4025 and CT.6050). He also made payments on behalf of the plaintiff in regard to his insurance premiums.

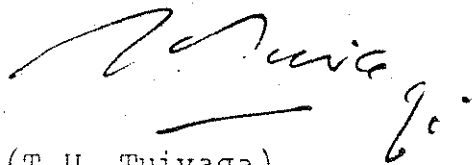
Defendant visited his son, plaintiff, in England in 1969. Plaintiff was then engaged to be married. Plaintiff returned to Fiji early in 1970 and by then he was married. He and his wife lived with the defendant and his family on the said property at 20 Marion Street from 1970 to August 1973 when construction of plaintiff's new house on the adjoining block (CT.4025) was completed. Plaintiff's wife worked as tutor sister at the Central Nursing School after their first child was born.

Defendant first discovered that both properties were in plaintiff's name in 1966 when he returned from New Zealand and by that time plaintiff had gone to London. However in 1970 when plaintiff returned from England defendant asked him why both properties had been registered in his name and asked plaintiff to transfer CT.6050 to him. Plaintiff explained that he had intended to build a house on the vacant block and that he could get a substantial building loan if he mortgaged both properties. Plaintiff then asked defendant to wait until he had built his house. Defendant agreed to these arrangements. It was agreed that as soon as the mortgage debt was cleared plaintiff would transfer the house to defendant. Defendant raised the matter again with plaintiff in 1976 when he was about to retire from Government service. He asked plaintiff to transfer the property to him so that he could build himself a new house or have the old one repaired properly. Plaintiff asked defendant to wait as there was still some mortgage debt owing on the two properties. On neither of these two occasions did plaintiff claim ownership of the said property. In 1973 defendant gave substantial help to plaintiff when his house was being built. Defendant fixed all window louvres, doors and glazed all windows, fitted locks on all doors and helped in laying tiles on floors in bedroom, lounge and kitchen. Defendant received no payment for his work on plaintiff's house.

In 1977 a serious family argument broke out between defendant's wife and plaintiff's wife which later embroiled the parties themselves to the extent that the plaintiff was moved to tell the defendant that he should not spend any more money on the said property. Plaintiff on that occasion also told defendant that he would not transfer the property to him. Defendant was so upset with plaintiff's remarks that he accused the plaintiff of cheating on him regarding the property. That was the first time that the plaintiff ever told defendant that he would not transfer the property to him. Soon after this incident defendant lodged a caveat against the said property.

On the evidence before me I am satisfied that the said property (CT.6050) was purchased with the adjacent property (CT.4025) on the understanding between the parties that the said property would be owned by the defendant and that the plaintiff would have the vacant block on which he would build his own house. I am satisfied therefore that in registering CT.6050 in his own name the plaintiff could only at best have done so as trustee for the defendant who has always been beneficially entitled thereto since the said property was bought. Accordingly I would grant the declaration sought and order that the plaintiff's title on the said property be cancelled and that the Registrar of Titles register same in the defendant's name as lawful and proper owner thereof.

In the result plaintiff's action is dismissed and judgment with costs will be entered for the defendant on his counterclaim.


(T.U. Tuivaga)
Chief Justice

Suva,
29th August 1980.