

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

CIVIL ACTION NO. 117 of 1983

BETWEEN : SABHU LAL s/o Ram Baran PLAINTIFF

AND : FIJI SUGAR CORPORATION DEFENDANT

Mr S R Shankar Counsel for the Plaintiff

Mr N Prasad for S B Patel Counsel for the Defendant

Later M S Sahu Khan for Defendant

R U L I N G

The plaintiff purchased certain property known as Malamala Native Lease No. 11608, sugar cane contract No. 4519 Yako Sector. The transaction was carried out by his father Ram Baran as his agent, who was also apparently authorised verbally by him to execute the transfer, the crop lien and the assignment of the sugar cane contract.

The transfer of the land has been registered in the plaintiff's favour by the Registrar of Titles - although by affidavit the Registrar of Titles for the time being says that it should not have been registered because the document was signed by Ram Baran who at the time had no registered power of attorney. However no steps seem to have been taken as yet by the Registrar to have the Transfer removed from the Register.

Nevertheless the defendant has refused to note the assignment of the land in its books, or the crop lien or the assignment of the sugar cane contract. The basis for the defendant's refusal is to be found in Clause 18(a) (iii) of the sugar cane contract itself. This clause in effect says:-

"The grower shall on a transfer by him of the right to occupy the farm assign to the transferee his whole interest in this contract. The Fiji Sugar Corporation shall not be bound by any such assignment unless -

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- iii) the assignee undertakes in the assignment in writing himself to occupy the whole farm and cultivate cane thereon and endorses this contract to this effect."

In the Assignment of Sugar Cane Contract, which is a printed form, there is a clause whereby the assignee covenants and undertakes the requirements of the said Clause 18 (a) (iii). But before the Fiji Sugar Corporation will register this transfer it requires the document to be signed by the transfer^{er} himself, although it says that it would be prepared to accept the signature of a person signing under the authority of a registered power of attorney. Unfortunately for the plaintiff the document was signed by his father Ram Baran who merely purported to sign as agent for the plaintiff.

The defendant has its own standards which it expects all sugar cane farmers, or prospective farmers, to conform to, and since it is concerned with the running of the sugar cane industry in the interests of all cane farmers in Fiji, its wishes should be given great weight unless there is no merit at all in them. Clause 18(a)(iii) doesn't in fact say that the transferee himself must sign, but clearly the tone is such as to suggest that this is a personal undertaking and anything less than a personal undertaking signed by the transferee - or as the FSC says by his registered attorney - isn't good enough. If that is what the Fiji Sugar Corporation has always insisted on can or should the court interfere?

It must also be a factor that although the Registrar of Titles has registered the transfer of the farm there must remain the possibility that the Registrar, in the light of his affidavit, might still take steps to have the Transfer of Title removed from the Register

The plaintiff obviously went about the whole transaction in the wrong way from the beginning and can scarcely blame the Fiji Sugar Corporation for raising objections to his request to note the assignment.

What has the plaintiff done, or can he do, to meet the Fiji Sugar Corporation requirements? He has not signed the assignment itself, he has not given Ram Baran a registered power of attorney. It is too late for the latter in any case since he could not give a retrospective power of attorney.

With regard to signing the assignment of the sugar cane contract in his own name, the plaintiff argues that it is too late for him to sign now because the document is already stamped. But I presume that it would always be possible to cancel that document and execute another one.

What he has done is to sign a document entitled Sugar Cane Contract Endorsement. This endorsement is in accordance with Clause 2 of the Sugar Cane Contract Assignment itself which reads:-

"The assignee covenants and undertakes that he personally will occupy the whole of the said farm and will cultivate sugar cane thereon and will on production of the sugar cane contract endorse thereon a covenant or undertaking to this effect and also a covenant to be bound by or perform the obligations on the growers part there-in contained."

So there are two requirements under the contract. Firstly a personal undertaking by the assignee in the assignment itself in accordance with Clause 18(a)(iii) of the contract. And secondly an endorsement to be attached to the contract in which the assignee gives a similar undertaking in accordance with clause 2 of the assignment.

Those requirements are insisted upon by the defendant in respect of all assignments of cane contracts. Otherwise they have nothing to do with the validity of any transfer of title to the land. Nor is this Court concerned with whether both signatures are necessary to bind the plaintiff. The cane contract requires any assignment itself to contain a personal undertaking by the assignee quite apart from any endorsement to be attached to the cane contract.

The plaintiff asks the Court to find that an endorsement signed by the assignee alone is sufficient, and that the endorsement does in fact form part of the assignment. But this can't be correct because the endorsement is another undertaking by the assignee in another document to be attached to the cane contract.


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If the plaintiff has not complied exactly with the requirements of the Fiji Sugar Corporation on a matter which is essentially a matter between himself and the Fiji Sugar Corporation he really cannot expect the Court to step in and require the Fiji Sugar Corporation to lower its standards. It is not as if the Fiji Sugar Corporation is treating the plaintiff in any way differently from anyone else. In fact, it is the plaintiff who is asking that he be treated differently from other persons.

The plaintiff's application is therefore dismissed with costs to be taxed if not agreed.

LAUTOKA

13 JANUARY 1984



G. O. L. Dyke
JUDGE