IN THE SUPREME COURT OF FIJI
AT SUVA

[APPELLATE JURISDICTION]

CIVIL APPEAL No.CBV 001 of 2013
(On Appeal from Fiji Court of Appeal No: ABU 0005 of 2012 and High Court Civil Action No. HBC 320 of 2007)

BETWEEN	:	**CHANDAR LOK**
		PETITIONER
AND	:	**1. BAL RAM** **2. THE REGISTRAR OF TITLES** **3. THE ATTORNEY GENERAL OF FIJI**
		RESPONDENTS
CORAM	:	Hon. Madam Justice Chandra Ekanayake Hon. Madam Justice Anjala Wati Hon. Mr. Justice Ariam Brito-Mutunayagam
COUNSEL	:	Mr. V. Mishra for the Petitioner Mr. A. J. Singh with Ms. P. Mataika for the 1st Respondent Ms. K. Naidu and Ms. P. Prasad for the 2nd and 3rd Respondents
Date of Hearing	:	06 November 2013
Date of Judgment	:	04 April 2014

JUDGMENT OF THE COURT

Madam Justice Ekanayake

[1] This is an application for special leave to appeal preferred against the judgment of the Court of Appeal of Fiji in case No. ABU 05/2012 dated 30/11/2012 dismissing the appeal of the present petitioner against the decision of the High Court of Fiji dated 9/12/2011 in Case No. HBC 320 of 2007.

[2] The petitioner by his petition to this Court dated 09/01/2013 has sought the following reliefs:

- Special leave to appeal from this Court against the judgment of the Fiji Court of Appeal dated 30.11.2012 in case bearing No. ABU 05/2012.
- That those decisions of the High Court and the Fiji Court of Appeal be reversed and set aside with costs to the petitioner.
- That the appeal to this Court be allowed with costs in all Courts; and
- To hold petitioner's registered proprietorship of Lease No: 44656 is indefeasible.

High Court Action

[3] The 1st respondent (hereinafter sometimes referred to as the plaintiff) by his statement of claim dated 15.10.2007 filed in the High Court of Fiji (at Lautoka) in case bearing No: HBC 320/2007 had prayed for the following reliefs against the present petitioner (who was the 1st defendant in the said High Court Case) and 2nd and 3rd respondents (who were the 2nd and 3rd defendants in the said High Court Case):-

- *special damages in a sum of $50,000.00 being for a one-sixth share of the Native Lease No. 44656,*
- *an order that the 2nd Defendant sets aside the Transfer 360347 unconditionally,*

- *for a Declaration that the 1st Defendant could not have transferred Native Lease No. 44656 by virtue of any alleged Power of Attorney that may have been granted as being against the spirit of the grant,*

- *for a declaration that the 2nd Defendant should not have and was negligent in consenting to the Orders referred to in paragraph 18 above of his statement of claim,*

- *for an order that the Will of the late Ballaiya, dated 13th May, 1992, be set aside unconditionally,*

- *for a declaration that the actions of the 1st Defendant were improper and/or unlawful and/or fraudulent,*

- *for a declaration that a Deputy Registrar of the High Court cannot over-ride an Order of the Judge of the High Court of Fiji or make Orders inconsistent with an Order of an Honourable Judge,*

- *for exemplary and punitive damages,*

- *interest under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27,*

- *such further and/or other relief that may be just and equitable to this Honourable Court,*

- *costs on an indemnity basis.*

[4] The present petitioner (the 1st defendant before the High Court) by his statement of defence dated 04.12.2007 whilst only admitting paragraphs 1 to 3 of the said statement of claim dated 15.10.2007 had sought a dismissal of the plaintiff's (present 1st respondent's) claim. Further by paragraph 2 of the said statement of defence it was specifically averred that the said lease No.44656 was lawfully transferred to him and the transfer took place on 10.06.1994.

[5] The Learned Trial Judge by his judgment dated 09/12/2011 whilst concluding that the transfer of Lease No. 360347 of 25/03/1994 was invalid and unlawful and the 2nd defendant named therein (present 2nd respondent) could not have registered the same and its purported registration was invalid and unlawful as *abinitio* and proceeded to grant the 1st respondent only the reliefs prayed in sub-prayers (c), (d) and (f) of the prayer to the statement of claim [see paragraph 3 above].

[6] With regard to *locus standi* in paragraph 73 of his judgment the Learned Trial Judge had concluded as follows:-

> *"(73). Moreover, the first defendant also challenged the plaintiff's action on the basis of the absence of locus standi. The plaintiff claimed relief on the basis of the DFS, which related to the native lease in so far as the distribution of proprietorship is concerned among several children including the plaintiff and the first defendant. The DFS suffered from the same infirmities that the first defendant's transfer of lease suffered at the point of time of initiation of these proceedings before court. Even though the plaintiff ceased to be a beneficiary of the second Last Will of 19 May 1992, his right to seek court's intervention to ameliorate his concerns over the alleged fraudulent conduct of the first defendant relating to the Transfer of Lease, having relied on his entitlement in the DFS, could and should not, in my view, be denied in a civil suit such as this. I am, therefore, not inclined to accept the contention of the first defendant in regard to the absence of locus standi for the plaintiff to initiate and maintain these proceedings. I accordingly, reject the challenge based on the absence of locus standi."*

[7] The Court of Appeal Justices by their judgment of 30/11/2012 whilst affirming the High Court decision had dismissed the appeal of the petitioner with costs fixed at $4000 payable only to the 1st Respondent.

[8] For the reasons given in paragraph 28 of the impugned judgment of the Court of Appeal, the learned Justices had agreed with the conclusion of the Trial Judge in rejecting the challenge based on absence of *locus standi* of the 1st respondent in the High Court. The

said paragraph 28 of the Court of Appeal judgment is reproduced below for convenience:

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> *"28. – In the light of the above proposition, I am of the view that the entirety of the matters relating to the estate of the late Ballaiya had created a situation which justified the 1st Respondent who was to get a portion of the land according to the Deed of Family Settlement and who had been on the land at least for some time on the basis of that settlement instituting action against the Appellant and am in agreement with the conclusion of the trial Judge in rejecting the challenge based on absence of locus standi of the 1st Respondent."*

Factual Matrix

[9] (a) The 1st respondent and the present petitioner were 2 sons of one Mr. Ballaiya who is now deceased. The said Ballaiya was the registered proprietor of certain native land fully described as Lease No. 44656 (also described as Lease No.26573) "Toko" (part of Lot No.1 in Deposited Plan No. 1700 in the District of Tavua) in extent of 25 acres 2 roods and 8 perches also known as Lot no. 2 on DP 2404.in extent of 25 acres 2 roods and 8 perches.

(b) In or about September 1982 the said Ballaiya had entered into a Family Settlement Deed under which the present 1st respondent was made entitled to approximately 2 ½ acres out of the said land.

(c) In or about 1984, one Jai Raj – another brother of the 1st respondent and the petitioner assigned the share he got under the said Family Settlement Deed to him and thereafter he was in occupation and cultivation of about 7 acres of the said land.

(d) No consent had been obtained from the ITLB and as such according to the provisions of Land Transfer Act the said FSD was not a lawfully valid document.

(e) It was alleged that the petitioner had got the 2nd lease executed in his name abusing the powers vested in him under the power of attorney dated 16/6/1988 executed by said Ballaiya nominating him as the Attorney holder. The said transfer was signed by the 2nd respondent [Registrar of Titles] under the registration No. 360347 on 10/6/1994.

(f) Consequent upon the death of the said Ballaiya (which occurred on 3/4/1999) probate bearing No.43420 was granted to the present petitioner who was an executor under the Will on proof of the Will dated 13/5/1992. According to the said Last Will (at page 110 of the Supreme Court brief) the said Ballaiya's entire estate both real and personal was bequeathed to three (3) of his sons namely; Raj Dewan, the present petitioner and Ram Chandra in equal shares; and share alike absolutely. The 1st respondent, Bal Ram was given nothing under the Will.

(g) The Will had been signed by Ballaiya and his signature appearing on the Will was not challenged in the High Court proceedings.

(h) In the above premises the 1st respondent had sought the reliefs prayed in the prayer to the statement of claim dated 15.10/2007 against the present petitioner.

[10] **Application for Special Leave to the Supreme Court**

The petitioner's main grounds of appeal, for special leave as averred in paragraph 34 of his present petition are as follows:

1) The Fiji Court of Appeal erred in:-

(a) *Placing reliance on taking out of Probate of the Estate of Ballaiya as proof that the Petitioner was not sure of his entitlement under his transfer and/or using it as evidence of fraud against him.*

(b) *Wrongly inferring that if the Lease No. 44656 had been disposed of by transfer there would be no estate to administer and that there was no other reason for Probate to be taken out.*

(c) *Holding the use of Power of Attorney when a person (the late Ballaiya) is personally able to sign was evidence of fraud for the purpose of the Land Transfer Act and that the transfer by using the said instrument was fraudulent.*

2) The Fiji Court of Appeal erred in holding that the 1st respondent had *locus standi* or enough standing to bring this action when he had already litigated and lost on the Deed of Family Settlement of September 1982, against Ballaiya.

3) The learned Justices of the Fiji Court of Appeal erred in law and failed to uphold that the cardinal principle of the Land Transfer Act and the Torrens system that the Register is absolute and conclusive particularly as the 1st respondent's Caveat had been litigated and removed and further as the principle of immediate indefeasibly is applied and accepted in Fiji.

4) The Learned Justices of the Fiji Court of Appeal erred in law in holding there was fraud and/or wilful blindness on part of the petitioner when:

(a) *the petitioner's position as a bona fide purchaser for good consideration had not been effectively challenged by positive proof,*

(b) *a determination from affidavit without cross examination of the witness Ms.Chandra Wati was inappropriate for determination of*

fraud in the present case as the Trial Judge did not have the opportunity to properly observe her demeanor.

5) The Learned Justices of the Fiji Court of Appeal erred in law in failing to take into account the following:-

(a) The first respondent had no cause of action against the petitioner. He only had a cause of action against the Estate of Ballaiya which he had exhausted as he had taken an action against the late Ballaiya both in the Lautoka High Court being Civil Action No. 188 of 1994 and the Agricultural Tribunal in respect of his alleged entitlement during the life time of Ballaiya which was both struck out and/or dismissed.

(b) There was res judicata and/or estoppal against the first respondent as there was no appeal against either or any attempt to re-instate.

(c) That the first respondent's cause of action was defeated and statute barred by the provisions of Section 4 of the Limitation Act and in holding that Section 15 of the Limitation Act stopped the Limitation Act from applying this action.

(d) The Learned Judge erred in making the declarations that he did when the first respondent had not pleaded the lack of consent of the I-Taukei Land Trust Board against the Appellant.

[11] The jurisdiction of the Supreme Court with regard to special leave is embodied in Section 7 of the Supreme Court Act No. 14 of 1998 as follows:-

"7. – (1) In exercising its jurisdiction under Section 22 of the Constitution with respect to special leave to appeal in any civil or criminal matter, the Supreme Court may, having regard to the circumstances of the case –

(a) Refuse to grant special leave to appeal,

(b) Grant special leave and dismiss the appeal or instead of dismissing the appeal make such orders as the circumstances of the case require, or Grant special leave and allow the appeal and make such other orders as the circumstances of the case may require.

(2) In relation to a criminal matter, the Supreme Court must not grant special leave to appeal unless –

(a) a question of general legal importance is involved,

(b) a substantial question of principle affecting the administration of criminal justice is involved, or

(c) substantial and grave injustice may otherwise occur.

(3) In relation to a civil matter (including a matter involving a constitutional question), the Supreme Court must not grant special leave to appeal unless the case raises-

(a) a far reaching question of law,

(b) a matter of great general or public importance,

(c) matter that is otherwise of substantial general interest to the administration of civil justice."

[12] A plain reading of the aforementioned Section 7(3) would show that the Supreme Court must not grant special leave to appeal unless the court is satisfied that the case raises a far reaching question of law; a matter that is of great general or public importance; a matter that is otherwise of substantial general interest to the administration of civil justice.

[13] The criteria enunciated in the aforementioned section - 7(3) have been comprehensively considered in decisions such as **Bulu v Housing Authority** [2005] FJSC-1 CBV11/2004S, **Ganesh Chand v Fiji Times Ltd**. CBV/2011) FJS2 and **Praveen's BP Service Station v Fiji Gas Ltd** CBV 01/2011.

[14] When considering the threshold criteria laid down in Section 7 (3) of the said Act, observations made by Court in the case of **Matalulu v DPP** (2003) 4 LRC712, too would lend assistance. That was to the following effect:

> *"In order to satisfy the threshold criteria in Section 7 (3) of the Supreme Court Act it should be noted that the parties should frame the questions with great care."*

[15] In applying the provisions in the above section, the Supreme Court of Fiji has adopted in decisions such as Bulu v Housing Authority [2005] FJSC 1 CBV0011/2004S (8 April 2005), the criteria enunciated by the Privy Council in Daily Telegraph Newspaper Company Limited v McLaughlin [1904] AC 776, which was the first case in which special leave to appeal from a decision of the High Court of Australia had been sought. Lord Macnaughten, at page 779 of his judgment, after observed that the same principles should apply as they did for an appeal from the Supreme Court of Canada, referred to the case of Prince v Gagnon [1882– 83] 8 AC 103, in which it was stated that appeals would not be admitted -

"save where the case is of gravity involving a matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character."

[16] However, during the arguments before us the Learned Counsel for the petitioner amongst others assailed the judgments of both the High Court and the Court of Appeal mainly on the rejection of the challenge raised on absence of 1st respondent's *locus standi* in the High Court.

[17] Several other important issues such as transfer of Lease No: 360347 of 25/3/1994 and the power given to the present petitioner under the said Power of Attorney also have been raised by the petitioner in his application to this Court.

[18] Upon a careful consideration of the facts and circumstances of this case and the grounds on which special leave has been sought, this case gives rise to far reaching questions of law involving matters of public importance. As such I conclude that threshold criteria enumerated in Section 7(3) of the Supreme Court Act No.14 of 1998 have been met by the petitioner. As such I am convinced that in all circumstances of this case it would suffice if special leave is granted on the below mentioned 2 questions of law to with:

1. Has the Fiji Court of Appeal erred in holding that the 1st respondent had *locus standi* or enough standing to institute the High Court action bearing No.HBC-320/2007?
2. Has the Fiji Court of Appeal erred in law and failed to uphold the cardinal principle of the Land Transfer Act and the Torrens system that the Register is absolute and conclusive?

Accordingly this Court proceeds to grant special leave to appeal on the above 2 questions of law.

[19] **Consideration of the 1st question of law (see para 18 above)**

In this regard, the pivotal question that awaits determination by this Court is whether the present 1st respondent had sufficient *locus standi* to institute the civil action bearing No.HBC/320 of 2007 in the High Court. As per his statement of claim filed in the High Court his claim has been mainly based on the 1/6th share alleged to have received by him under the Deed of Family Settlement (DFS) in September 1982 and on another share said to be received by another brother of his by the name Jai Raj from the father under the said DFS. The 1st Respondent's stance had been that he possessed both the above mentioned the said portions of the subject matter. According to the aforesaid Deed of Family Settlement, there had been a clause to the effect that it should get the consent of the Native Land Trust Board as required under section 12 of Native Land Trust Act. It had been the clear position of the 1st Respondent in the High Court that no consent was obtained from the I Taukei Land Trust Board (ITLTB). At this juncture it would be appropriate to consider the provisions in Section 12(1) of the Native Land Trust Act. The said section thus reads as follows:

> "Section 12(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lease under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or witholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealings effected without such consent shall be null and void."
>
> Provided that nothing in this section shall make it unlawful for the lessee of a residential or commercial lease granted before 29 September 1948 to mortgage such lease.

[20] In terms of the above section it shall not be lawful for any lease to alienate or deal with a land which is the subject of the lease or any part thereof whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the ITLB as lessor or head lessor first had and obtained.

[21] On the material available it is manifestly clear that no consent had been obtained with regard to the Deed of Family Settlement and as such the 1st respondent could not have raised any claim to the subject matter under the aforesaid Deed. The stance taken by the present 1st respondent in the High Court appears to be the same. If the aforesaid deed is legally invalid the other brother (Jai Raj) who was alleged to have got another share of the land under the same deed also could not have got anything legally.

[22] The concept of *'locus standi'* connotes the meaning of *'standi'*. In other words the applicant must have such interest in the matter to which his claim relates. Where a person has no interest at all or no sufficient interest to support a particular legal claim or action, such person will not have locus standi and thus no standing to sue another person. In other words it is a threshold to give standing to sue. The Court of Appeal had concluded that 1st Respondent had locus standi or sufficient standing to bring this action when he had already litigated and lost on the Deed of Family Settlement of September 1982 against Ballaiya, his late father. To put in a nutshell the test for *locus standi* is whether the Applicant has "sufficient interest." It is needless to stress that "sufficient interest" may differ from case to case depending on the facts and circumstances of each case. Sufficient interest is not something that could be considered in the abstract or as an isolated issue. It must be viewed both in the legal and factual context and "sufficient interest" means nothing but "sufficient interest" in the matter to which the proceedings relate to. As such in this case what needs

consideration is whether the 1st respondent (plaintiff in the High Court) had sufficient interest/standing in the matter to which his claim relates.

[23] The learned Justices of the Court of Appeal in paragraph 28 of their judgment (which is already reproduced herein before) had agreed with the conclusion of the Trial Judge in rejecting the challenge based on absence of *locus standi* of the 1st respondent. The said paragraph 28 makes it clear that the learned Justices had relied on the fact that the 1st respondent was to get a portion of the land in terms of the Deed of Family Settlement and as such the first respondent had been on the land at least for some time and thereby proceeded to uphold the Trial Judge's rejection of the challenge based on absence of *locus standi*.

[24] The above conclusion of the Court of Appeal needs careful consideration by this Court. It is observed that the first respondent in his oral testimony in the High Court under cross-examination had specifically stated that there was no consent for subdivision by the Land Board. Obviously this has to be in relation to the so called Family Settlement Deed executed by the father (Ballaiya) during his life time. The 1st respondent's testimony to the above effect destroys the basis of his claim in the High Court, for the reason that even as admitted in his own testimony no consent was obtained from the Land Board. As such, due to lack of consent from the Land Board the said DFS is not a lawfully valid document. Therefore the claim raised by the 1st respondent on the basis of his possession of the portion of land he is said to have got under the said Deed together with the portion Jai Raj is said to have got under the same Deed, should fail.

[25] Another basis of the 1st respondent's claim submitted to the High Court had been that the transfer of the Lease bearing No.360347 by the present petitioner by virtue of the powers vested in him under the Power of Attorney was unlawful. The said Power of

Attorney No.16019 was registered on 28.06.1988 (at page 458 –Vol.3 of the brief). Mr.Ballaiya (father of the petitioner and the 1st respondent) had passed away on 03.04.1999 as evidenced by the Death Certificate.

[26] By the Power of Attorney, late Ballaiya had appointed his son Chandar Lok (present petitioner) as his true and legitimate attorney to act for him in his name and on his behalf in his interests in Fiji in all matters connected with or pertaining to his affairs and property in Fiji and in all matters connected to the aforesaid absolute unrestricted unconditional power to his own soul absolute discretion without reference to him to do in his own name and on his behalf any act pertaining to his affairs, monies, properties (real and general) deeds, securities etc. A plain reading of the contents of the said Power of Attorney would show that it has granted the attorney holder extremely wide powers. The late father, Ballaiya too had placed his signature in the presence of the solicitor who executed the same.

[27] The challenge was raised on the basis that under the Power of Attorney the present petitioner could not have got the subsequent lease transferred in his name. It is noteworthy that the conclusion of the learned High Court Judge was to the effect that under the aforesaid Power of Attorney the present petitioner could not have legally executed the subsequent lease and as such the petitioner had abused the powers granted to him by the Power of Attorney and also acted against the terms of the said Power of Attorney. This finding was upheld by the Court of Appeal. In this backdrop need has now arisen to examine the correctness of the above finding.

[28] At the outset it would be pertinent to consider the nature and validity of the aforesaid Power of Attorney. A Power of Attorney is an instrument used for construction of authority. In other words it is an instrument conferring authority by deed and it is a

document which is construed strictly by the Courts, according to well established rules. It is a well established principle that the authority conferred by a Power of Attorney must be adhered to strictly. In construing wills and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless the words would lead to absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity or inconsistency. The rule, that words are to be construed according to their natural meaning, has in fact been described as the 'Golden Rule of Construction.' In other words in construing the terms of a deed or other similar instrument the question is not what the parties may have intended, but what is the meaning of the words which they used. The crux of the above principle is that the Court should give effect to the words used by the parties and there is little scope for the Court to seek to reconstruct in words or its own the contract which it thinks the parties in fact intended. Lord Wright had succinctly stated as follows in the case of **Luxor Eastborne Limited & Others v Cooper** 1All E.R. 33 at page 52 :-

> *"..... These general observations do little more than warn judges that they have no right to make contracts for the parties. Their province is to interpret contracts."*
> *In view of the principle enunciated as above the Courts are not expected to make contracts for the parties but their task is only to interpret".*

[29] By the decision in **Luxor V Cooper** (1941)1 All E.R. 33 at 53 – their Lorships had strengthened the above proposition of law by succinctly stating that:-

> *"It is agreed on all sides that the presumption is against the adding to contracts of terms which the parties have not expressed. The general presumption is that the parties have expressed every material term which they intended should govern their agreement, whether oral or in writing. It is well-recognized, however, that there*

may be cases where obviously some term must be implied if the intention of the parties is not to be defeated, some term of which it can be predicated that "it goes without saying," some term not expressed, but necessary to give to the transaction such business efficacy as the parties must have intended. This does not mean that the court can embark on a reconstruction of the agreement on equitable principles, or on a view of what the parties should, in the opinion of the court, reasonably have contemplated. The implication must arise inevitably to give effect to the intention of the parties. These general observations do little more than warn judges that they have no right to make contracts for the parties. Their province is to interpret contracts. However, language is imperfect, and there may be, as it were, obvious interstices in what is expressed which have to be filled up. Is there, then, any reason in the present case for thinking that there is some defect in expression, or something omitted because it seemed too obvious to express? I cannot find any such reason."

[30] The Power of Attorney which is under consideration in this case is a general Power of Attorney granting the petitioner very wide powers such as follows:

> *"..... that my said Attorney shall have absolute unrestricted and unconditional power hereunder of his own sole and absolute discretion and without reference to me to do or cause to be done for me and in my name and on my behalf any act, deed, matter or thing of what kind or nature so ever pertaining to my affairs, moneys, properties (real and personal) deeds, securities, goods, chattels, effects and things chooses in action and chooses in possession and to all matters of what kind of nature, so ever with which I shall or may be in any way connected or which shall or may in any way pertain to me as my attorney may think proper or expedient and which I myself could lawfully do or cause to be done if personally acting in the premises AND for such purpose whatsoever and I hereby declare that I do*

no by these presents specify any particular power or powers which I hereby intent to confer upon my attorney for fear that by so doing....."

Further, the said Ballaiya had agreed to allow, ratify and confirm all the acts done by his Attorney holder and he had placed his signature also in the presence of his lawyers who executed this document.

[31] It is observed that Section 118 of the Land Transfer Act specifically allows a registered proprietor of any land to appoint a Power of Attorney on his behalf and upon its registration to execute transfers on behalf of the registered proprietor. The aforesaid Section 118 is reproduced below:

> *"118. The registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, may by power of attorney in the prescribed form or such other form as may be approved by the Registrar, and either in general terms or specially, authorise and appoint any person on his behalf to execute transfers of, or other dealings with, such land, estate or interest, or to sign any consent or other document required under the provisions of this Act, or to make any application to the Registrar or to any court or judge in relation thereto."*

Further section 119 of the same Act provides that a Power of Attorney which is intended to be used for the purposes under the said Act must be registered with the Registrar of Titles.

> *"119. Every power of attorney intended to be used under the provisions of this Act, or a duplicate or certified copy thereof, verified to the satisfaction of the Registrar, shall be deposited*

with the Registrar who shall register the same by entering in the register to be known as the "Powers of Attorney Register" a memorandum of the particulars therein contained and of the date and hour of its deposit with him."

It is manifestly clear that the above the provisions in the Land Transfer Act is not a bar for execution of a Power of Attorney by a registered proprietor. It had been duly registered with the Registrar of Titles on 28.06.1988. Non registration of the said Power of Attorney had never been raised by any party. Thus it has become an instrument which has acquired legal validity for all purposes.

[32] A challenge was raised by the 1st respondent with regard to the execution of the subsequent lease by the petitioner by virtue of the powers vested in him by the Power of Attorney. A plain reading of the said Power of Attorney would make it clear that extensive powers had been granted to the petitioner as the Attorney holder. The terms embodied in an instrument such as this has to be interpreted in such a way to give effect to the words used therein by the parties and the Court cannot seek to reconstruct the words. This proposition has been clearly enunciated in the aforesaid case of **Luxor Eastborne Ltd. v Cooper**. In view of the above I am persuaded to conclude that the challenge raised on the basis of abuse of power granted under the Power of Attorney should fail.

[33] In view of the foregoing analysis, I am inclined to hold the view that there had been overwhelming material to determine that the 1st respondent did not have *locus standi* /enough standing to bring the aforesaid action in the High Court. Thus I am compelled to conclude that the finding of the Learned Trial Judge appearing at paragraph 73 of his judgment with regard to rejection of the challenge based on absence of *locus standi* of the present 1st respondent in the High Court is erroneous and the said judgment is set

aside. For the reasons given in this judgment, I conclude that the Learned Justices of the Court of Appeal too had erred in affirming the said conclusion of the Trial Judge. In view of the above conclusion of this Court with regard to absence of 1st respondent's *locus standi* in the High Court, he could not have succeeded in getting any of the reliefs prayed in his statement of claim. Hence consideration of the 2nd question of law on which special leave was granted becomes futile.

[34] I proceed to answer the 1st question of law on which special leave was granted in the affirmative. Accordingly I set aside the judgment of the Court of Appeal dated 30th November 2012.

[35] **Conclusions**

1) In view of the answer given to question No.1 as above, no necessity arises to consider the 2nd question of law on which special leave was granted.

2) The impugned judgment of the Court of Appeal dated 30.11.2012 and the judgment of the High Court dated 09.12.2011 are hereby set aside.

3) Accordingly the appeal of the appellant to this Court is allowed. In all circumstances of the case no order is made with regard to costs in this Court.

Madam Justice Wati

I agree with the conclusions of Madam Justice Chandra Ekanayake.

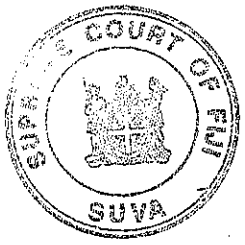
Mr. Justice Brio-Mutunayagam

I too agree with the conclusions of Madam Justice Chandra Ekanayake.

.....

Hon. Madam Justice Chandra Ekanayake

Justice of the Supreme Court



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Hon. Madam Justice Anjala Wati

Justice of the Supreme Court

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Hon. Mr. Justice Ariam-Brito Mutunayagam

Justice of the Supreme Court

Solicitors:

Mishra Prakash & Associates for the Petitioner

Anil J. Singh Lawyers for the 1st Respondent

Attorney General's Chambers for the 2nd and 3rd Respondents.