

IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CIVIL PETITION NO. CBV 0007 of 2023
Court of Appeal No. ABU 0010 of 2020

BETWEEN : **SATENDRA PRASAD**

Petitioner

AND : **SHIVA NAND**

Respondent

Coram : **The Hon. Justice William Calanchini**
Judge of the Supreme Court

The Hon. Justice Terence Arnold
Judge of the Supreme Court

The Hon. Justice William Young
Judge of the Supreme Court

Counsel : **Mr. A. J. Singh, Mr. P. Sharma, Ms. P. D. Prasad for the**
Petitioner
Mr. D. S. Naidu for the Respondent

Date of Hearing : **13 June, 2024**

Date of Judgment : **28 June, 2024**

JUDGMENT

Calanchini, J

- [1] I have had the opportunity of reading in draft form the judgment of Young, J and agree with his reasoning and his conclusion.

Arnold, J

- [2] I too agree with the orders proposed by Young J and his reasons.

Young, J

- [3] Shiva Nand (to whom I will refer as “Mr Nand”) is the son of the late Parma Nand (“Mr Nand, senior”) who died on 12 October 2005. At that time, Mr Nand was 19. Mr Nand senior did not leave a will. He had no other surviving children and his wife had predeceased him. So, Mr Nand was the sole beneficiary of his estate.
- [4] The petitioner, Mr Satendra Prasad, is a brother of Mr Nand, senior. Based on the findings of fact in the Courts below:
- (a) Mr Prasad, without the knowledge or approval of Mr Nand, obtained letters of administration of the estate of Mr Nand, senior and took control of the estate’s assets which he used for his own purposes.
 - (b) On 15 April 2009, Mr Nand was induced to sign a deed renouncing his interest in his father’s estate in favour of Mr Prasad (“deed of renunciation”). This deed was prepared by a lawyer, Mr Vijay Naidu. He had acted on the instructions of, and was paid by, Mr Prasad. Mr Nand says that the effect of the deed of renunciation was misrepresented to him, essentially by an assertion that it was for purposes associated with obtaining a loan. He certainly did not receive independent advice and there is no suggestion that he was told he should obtain independent

advice. Although Mr Vijay Naidu purported to witness Mr Nand's signature, he was not present when the deed of renunciation was signed.

- (c) When Mr Nand challenged Mr Prasad over what had happened, Mr Prasad's response was to commence proceedings to evict him from a residential property that formed part of the estate. This was on the basis that the effect of the deed of renunciation was that Mr Prasad now held indefeasible title to the property in his own right.

[5] Mr. Nand issued proceedings in which he sought orders setting aside of the deed of renunciation and requiring Mr Prasad to provide accounts of his dealings with the estate and transfer all assets of the estate to Mr Nand. He also sought exemplary damages and indemnity costs. These proceedings were dealt with at the same time as the eviction proceedings.

[6] On Mr Nand's case, Mr Vijay Naidu was a critical player in the fraud that had been perpetrated on him. Unsurprisingly, Mr Nand did not call him to give evidence. Neither did Mr Prasad. The latter's failure to call Mr Vijay Naidu was very significant.

[7] Under the deed of renunciation, Mr Nand, then only 23, surrendered his entire interest in the estate to Mr Prasad. As the Administrator of Mr Nand senior's estate, Mr Prasad was meant to be acting in the interests of Mr Nand and not for his own personal benefit. For that reason alone, the deed of renunciation was highly suspicious. The judgments of the courts below refer to other factors – including a significant misstatement in the recitals to the effect that Mr Prasad was also a beneficiary of Mr Naidu senior's estate – that were also suspicious.

[8] Above Mr Vijay Naidu's signature on the deed of renunciation are the following words:

...I certify that the contents [of the deed] were read over and explained to [Mr Naidu] in the English language and that he appeared fully to understand the meaning and effect thereof in the presence of me.

The effect of Mr Nand's unequivocal evidence was to deny this. He said that he had been fraudulently induced to sign the deed of renunciation by misrepresentations as to

its purpose and effect. The forensic dynamics of the case meant that Mr Prasad was required to give a convincing innocent explanation for how the deed came to be drafted and executed. In this context, Mr Prasad's failure to call Mr Vijay Naidu made it practically inevitable that he would lose the case. The leading case on this is the High of Australia decision, *Jones v Dunkel*.¹ The present case was so obviously within what is sometimes referred to as "the rule in *Jones v Dunkel*" that its application gives rise to no real question of law.

[9] In the High Court, Mohammed Mackie J found for Mr Nand on all issues in dispute. The orders he made:

- (a) set aside of the deed of renunciation;
- (b) required estate property acquired by Mr Prasad to be transferred to Mr Nand;
- (c) required Mr Prasad to submit accounts in relation to his receipt of income from estate property and proceeds of insurance policies; and
- (d) dismissed Mr Prasad's claim for eviction;
- (e) awarded Mr Nand punitive damages of \$15,000 and interest; and
- (f) directed Mr Prasad to pay summarily assessed costs of \$5,000.

[10] Mr Prasad's appeal to the Court of Appeal was dismissed with costs of \$5,000. A cross-appeal by Mr Nand was not pursued and was dismissed without costs.

[11] The grounds upon which leave to appeal to this Court may be granted are specified in s 7(3) of the Supreme Court Act 1998. This provides:

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;

¹ *Jones v Dunkel* (1959) 101 CLR 298.

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

[12] The petition seeking leave to appeal proposes eight grounds of appeal, which are largely addressed to the conclusions of the Courts below in relation to the deed of renunciation. These grounds were developed in the submissions for the petitioner with assertions that:

- (a) Mohammed Mackie J wrongly proceeded on the basis that Mr Nand was a minor when he executed the deed of renunciation.
- (b) Challenged the weight placed by Mohammed Mackie J on the non-calling of Mr Vijay Naidu.
- (c) The courts below acted out of sympathy for Mr Nand.
- (d) Mr Nand's evidence that he thought that the document was to do with obtaining a loan was incredible. And
- (e) If there was fraud, it was on the part of Mr Vijay Naidu and not the petitioner. Associated with this argument counsel raised an indefeasibility of title argument that I see as misconceived.²

[13] Other than the misconceived indefeasibility of title issue, all arguments advanced are factual. They challenge concurrent findings of fact in the Courts below that were well-merited on the evidence. More significantly, they simply do not engage with the grounds upon which leave to appeal to this Court may be granted.

[14] I would dismiss the petition for leave to appeal and award Mr Nand costs, summarily assessed, of \$10,000.

² The estate property included a leasehold interest in land to which Mr Prasad had obtained title. With deed of renunciation set-aside, he indisputably held that title only as administrator of the estate and was thus required to transfer it to Mr Nand, the sole beneficiary of the estate.

[15] **Orders of the Court**

1. *The petition seeking leave to appeal is dismissed.*
2. *Mr. Prasad is to pay Mr. Nand costs, summarily assessed of \$10,000.*

W. Calanchini

The Hon. Justice William Calanchini
Judge of the Supreme Court

 *Terence Arnold*

The Hon. Justice Terence Arnold
Judge of the Supreme Court

William Young

The Hon. Justice William Young
Judge of the Supreme Court