

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 10 of 1980

Between:

KALAP DEI
d/o Budhu

Appellant

- and -

- 1. RAM LAKHAN
s/o Phagu
- 2. NARAYAN REDDY
s/o Venkat Reddy
- 3. JASWANT PRASAD
s/o Nirranjan
- 4. BANSRAJ SINGH
s/o Balessar
- 5. SOLOVI REDDY
s/o K. Reddy

Respondents

Mr. K.C. Ramrakha for Appellant
Mr. B.C. Patel for Respondents

Date of Hearing: 19 September 1980
Delivery of Judgments: 30.9.80

JUDGMENT OF THE COURT

Henry J.A.

This appeal relates to a contract under which a number of sugar cane growers combined to form a gang, called the Nakorokoro Portable Line Gang, for the purpose of cutting sugar cane on their respective farms on a mutual basis for the supply of labour. The contract is a document commonly used for the purpose. We were told the case is to be treated as

a test-case at least for some other parties. There are twenty eight signatories to the contract which states that the parties have entered into partnership for the purpose of making provision for the harvesting of their respective cane crops during the 1974 cane cutting season. The parties all reside in or about Barara near Lautoka. Whilst the form of the contract is well drawn and appears to be adequate for the purpose, unfortunately, many spaces have been left blank so the form is incomplete in some important provisions.

There is evidence that bad weather interfered with normal conditions expected for cutting; that there was a lack of cutters, and, also a lack of trucks for cartage. Whatever the real causes were, in the event some crops, including that of appellant, were not harvested. Appellant engaged another gang at a cost of \$1,680.25 which she claimed from respondents. The learned magistrate gave judgment for that amount less one-twenty-eight which he apportioned for her blame, making a final sum of \$1,290.42 and costs. From this judgment respondents appealed to the Supreme Court which reversed the decision in the Magistrate's Court. From that reversal the present appeal has been brought. By section 12(1)(d) of the Court of Appeal Act appellant is confined to questions of law.

Clause 4(a) of the contract provided as follows:

"4(a) It is hereby agreed that each signatory of this agreement shall cut by himself or cause to be cut or carry out or cause to be carried out such other functions by a substitute an amount of work which earns for the signatory or substitute, as the case may be, an amount of money equivalent to the total cost of harvesting the crop of the signatory."

Then followed a proviso dealing with the substitute. Rates of pay for each person actually engaged in cutting were fixed. Crops were to be harvested in turn in accordance with provision in that behalf but limited to a percentage of the crop on the first cutting. This ensured each had a proportion of cane harvested at a time earlier than would have resulted if each crop had been completely harvested before passing on to the next.

The contract provided for the appointment of a committee, called "the Gang Committee", which comprised five members one of whom was the chairman and one of whom was the secretary. It also made reference to a sirdar although there appears to be no provision for such an appointment in the contract. The sirdar for the 1974 season was first respondent, the chairman was second respondent (called the president in evidence) and the other three respondents were gang members. It is not stated who was the secretary. The Gang Committee were given certain powers of management of the affairs of the parties in relation to their activities.

Pleadings were ordered. In the statement of claim it was alleged that respondents were the Gang Committee. This was admitted in the statement of defence. The basis of the claim made was that appellant's sugar cane was to be harvested under the supervision and management of respondents as the Gang Committee. The first complaint was that respondents were responsible for organising and harvesting the sugar cane but that they allowed the gang to disband before appellant's cane was cut. Further, that more than the permitted percentage was cut on farms which were harvested up to the time of disbandment and before appellant's crop was

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cut and that respondents were negligent in failing to provide a harvesting programme. It is clear that the basis of the claim was breach of contract.

The findings of the learned magistrate are not easy to follow. He found that certain specific allegations of breaches of clauses in the contract had not been proved but he went on to pose the question of liability and to answer it thus:

" So the question arises what, if any, were the contractual duties which the committee members, the Defendants undertook to the Plaintiff to perform. The whole basis, it seems to me, of the Plaintiff's case is that the Defendants failed in their obligations to her. But I do not find on the evidence before me any contractual relationship between the Committee and the Plaintiff which was more than the basic contractual relationship that each partner had with the other. Apart from anything else, as I have observed, the Committee members were not paid for what they did qua Committee members. In my view there was no separate contract between the Defendants and the Plaintiff.

.....

I have already said that I am satisfied that there were breaches of the duties undertaken by the Defendants. I am satisfied that as a result loss in the form of extra expense resulted. However, I have already pointed out that this form of agreement is basically a co-operative venture and that each partner assumed duties. In my view it was the duty of each partner to ensure that the gang committee did its job properly, and that a valid complete and workable system of operation was carried out. I do not mean that each partner had to supervise every detail of what the Committee did although each had a right to do so. The partnership had a right to vote the

Committee right out if it was dissatisfied. I do however take the view that the fundamental reason that this case has arisen is that the terms of the agreement Exhibit C were not given effect. I take the view that it was to the mutual benefit of all partners, whether committee member or not, that they should have been. If Defendants were negligent and I find they were then I also consider that Plaintiff and the other partners contributed to that negligence. "

What this means is, with respect, not very clear. However, on this basis judgment was given and reversed in the Supreme Court as earlier stated. The grounds of appeal, in the notice filed in this Court, contrary to the provisions of section 12(1)(d), contained matters of fact. These grounds were abandoned before us except perhaps in respect of some questions foreshadowed in ground 1. Counsel for appellant, who did not appear at either of the previous hearings, did not seek to uphold the judgment in the Magistrate's Court.

Counsel submitted that the remedy originally sought had been misconceived but that relief ought to be granted, even at this late stage, by allowing the appeal and remitting the case to the Magistrate's Court for a rehearing on the basis that the evidence disclosed a partnership and that appellant was entitled to an order for accounts.

Counsel for appellant contended that this Court should, in effect, direct the Magistrate's Court to exercise its powers under section 27(2) of the Magistrates' Courts Act (Cap. 10) which reads:

"27.(2) A magistrate in the exercise of the jurisdiction vested in him by this Act shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or

relief whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided."

Assuming that the present contention raises a question of law under section 12(1)(d), now available to appellant, and we do not necessarily concede that it does, we will proceed to consider whether such a course ought now to be entertained.

The pleadings clearly based the claim on a breach of contract including a breach in the form of negligent performance. It was aimed solely at the members of the Committee. The parties, of course, knew that they had called the contract a partnership and had described themselves as partners. The contract which was the basis of the action so set out their relationship. There was nevertheless a dispute by respondents' counsel whether the true relationship was one of partnership. Why this arose is not clear but the learned magistrate held that there was a partnership. However, be that as it may, that finding was not necessary for the determination of the claim and the relief granted had nothing to do with the existence or non-existence of a partnership. This finding was obiter. No such issue arose in the appeal to the Supreme Court. Counsel for respondents still contests the finding.

Counsel for appellant was asked by the Court whether this finding should stand and his answer was in the affirmative. We cannot accede to this course. It would be unfair and highly prejudicial to respondents

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who do not concede the point and who had no reason to appeal against the finding in view of the relief granted in the Magistrate's Court. The real question goes much further. Even, if there is a partnership contrary to the contentions of respondents, the relief now sought requires a finding that either the partnership has been dissolved or that it ought to be dissolved. All parties to the contract are interested in any proceeding which seeks that kind of relief. By paragraph 13 of the amended statement of claim respondents raised the issue of their personal liability and said appellant should have commenced a representative action against all parties to the contract. This was sufficient to draw the attention of appellant to the fact that it was claimed that the proceedings were entirely misconceived.

The intention of section 27(2) is that all matters in controversy shall as far as possible be completely and finally determined. It refers to all such remedies or relief as any of the parties may be entitled to in respect of any claim properly brought. The claim now made is a radical departure from the simple claim for damages for breach of contract which was the sole issue between appellant and respondents. The assertion of a partnership was only incidental and the finding on it was, as we have said, obiter. No question of dissolution or the taking of accounts could be properly brought forward either on the pleadings or in the manner in which the claim of appellant was prosecuted in the Magistrate's Court. It was not a matter then a controversy. The parties were sued not as partners but as organisers and managers of the operations of the gang. For the present remedy the claim would have to be completely and differently constituted both as to content of the statement of claim and prayer and as to parties. This after

it has been on appeal for the second time. Moreover, the contract contains a wide right to arbitration which, although pleaded but waived in the present action, the parties including parties not now joined, may wish to invoke.

For these reasons we are not prepared to entertain the ground of appeal and form of relief put forward and sought at this late stage. The appeal therefore fails and is dismissed with costs to be fixed by the Registrar. Dismissed accordingly.

(Sgd.) T. Gould
Vice President.

(Sgd.) T. Henry
Judge of Appeal.

(Sgd.) B.C. Spring
Judge of Appeal.