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IN THE FIJI COURT OF APPEAL  
Civil Jurisdiction

Civil Appeal No. 60 of 1981

BETWEEN:

MOHAMMED JAFFAR KHAN  
s/o Budhu Khan

Appellant

- and -

ZINNAT d/o Abdullah

Respondent

S.R. Shankar for Appellant  
R. Reddy for Respondent

Date of Hearing: 18th March, 1982

Date of Judgment: 1982

JUDGMENT OF THE COURT

Marsack, J.A.

This is an appeal against the judgment of the Supreme Court delivered on 18th September, 1981 granting an injunction restraining the Fiji Sugar Corporation from making any further payments to appellant under a crop lien affecting farm 3209 Qeलेleca, until the final determination of action No. 371 brought by respondent against appellant.

Respondent is the administratrix of the estate of Mohammed Kazim Khan who died on 20th November, 1979. During his lifetime deceased had had a cane farm on Native Lease 10753, carrying cane contract No. 3209. On 1st November, 1977 he had executed a crop lien for \$7485.64 in favour of appellant. Appellant has been receiving payments under this crop lien from 1978 until September 1981, when the injunction was ordered. According to a statement submitted by the respondent, appellant has received after payment of all

payments including interest, due under the crop lien, a total sum of \$9382.16 over-paid. Action No. 371 was instituted by respondent against appellant on 29th August, 1981 claiming a refund of the excess payments, and also a discharge of the crop lien. There is no record of any defence having being filed.

On 31st August, 1981 respondent filed proceedings claiming an injunction as stated. Appellant filed an affidavit in reply, submitting statements of account showing further advances to deceased and certain other outgoings, with the result that according to appellant a substantial sum was still owing to him under the lien. In passing it may be said that these statements are by no means easy to follow.

Appellant's affidavit further alleges that a sale and purchase agreement was entered into between deceased and appellant on 4th April, 1977 under which appellant agreed on certain terms to purchase the cane farm. His affidavit further refers to action No. 384/80 brought by him in the Supreme Court, Lautoka, claiming specific performance of an agreement to sell 9 ac. 2r. 3lp. being Native Lease 10753 covering cane contract 3209 Qeleloa.

It is difficult to see how the issues in dispute between the parties can be finally determined until actions 371 and 384 have been heard and decided. From the Lautoka Court information has been received that No. 384 is set down for hearing on 21st June; but whatever the result of that action it has no bearing on the matter of the injunction, which operates until 371 is finalised.

On the face of it nothing stands in the way of an early hearing of that claim. In fact the learned Judge when granting the injunction, added a note: "speedy trial if possible". As matters stood at that time, the learned Judge had merely to decide whether the interests of justice demanded that the money payable by the Fiji Sugar Corporation under the crop lien should be held in safe-keeping until the Court made a definite finding whether or not there

had already been an over-payment. According to respondent's affidavit the amount already paid greatly exceeds the principal sum secured by the crop lien, plus interest thereon. The onus then lies on the appellant to prove the alleged further advances, as to which nothing is known by respondent. Judgment in action No. 371/80 should finally determine what sum is owing and to whom. Even if the Court finds in favour of appellant no injustice will have been done to him except a possible loss of a small sum by way of interest; but if the Court finds for the respondent, the lifting of the injunction before trial will cause her considerable loss.

For these reasons we cannot see our way to order that the injunction be lifted.

Accordingly the appeal is dismissed, with costs to be fixed by the Registrar if not agreed.

*Christina M. ...*  
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 Judge of Appeal

*[Signature]*  
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 Judge of Appeal

*[Signature]*  
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 Judge of Appeal