IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Civil Appeal No. 9 of 1977

000353

BETWEEN: 1. MURARI LAL s/o Brij Mohan
2. INDAR BAS d/o Lachman Singh } Appellants

- and -

SANTU s/o Mahabir Respondent

Dr. M.S. Sahu Khan, Counsel for the Appellants
Mr. G.P. Shankar & Mr. S.R. Shankar, Counsel for the Respondent

JUDGMENT

This is an appeal from the decision of a Magistrate's Court at Ba in an action wherein the present respondent as plaintiff claimed declarations concerning certain land. The Statement of Claim alleged that the plaintiff, that is the respondent in this Court, was the legal owner of certain land described in Crown lease lot 87 Certificate of Title 12060 Tovatova Back Road, Tavua, and that the defendants who are the appellants had trespassed on that land and were occupying 4 acres of it, that possession had been demanded and the appellants refused to give possession. The defendants put in a defence which is not very helpful, for it is a complete denial of the plaintiff's claims. However they add that they working their own farm and expressly deny that they are trespassing on the plaintiff's land. Before evidence was taken, the appellants took a preliminary point, that a question of title was involved, and that the action should be removed into the Supreme Court. I suspect that was merely an attempt to delay matters, because the writ was issued in October 1975, although it was not served until March 1976. However, a defence was put in on 14th July 1976, and it would have been possible for the appellants' solicitor then to move to have the case transferred to the Supreme Court. However, when the submission was made on 27th April 1977 the learned magistrate declined to accept it. The trial then proceeded. The plaintiff respondent produced as his document of title a letter of approval signed on behalf of the Director of Lands evidencing a contract for the lease of lot 87 Certificate of Title 12060 Tovatova Back Road situated in the tikina of Tavua and estimated to contain 18 acres.

/2.

The lease was to be for ten years from 1st January 1974. He gave evidence that he had formerly held that land as a tenant of the Colonial Sugar Refining Company Limited and had been on it for 25 years. He said that he gave 3 to 3¼ acres of his land to the second appellant in 1972 to plant rice. No rent was charged. The second appellant is the sister of respondent's wife. After she had planted and harvested rice the second appellant planted cane contrary to the respondent's wishes. She planted in 1973 and harvested in 1974 and then she and her son the first appellant said the land belonged to them. A panchayat was called, and it was agreed that appellants should cut their cane in 1975 and give the land back in 1976. The land has not been returned. The first appellant gave evidence that the land was his, and he produced a letter of approval signed for the Director of Lands for 16 acres being subdivision of lot 3980 of Certificate of Title 6594 Tovatova situated in the Tikina of Tavua, also for 10 years from 1st January 1974. The second appellant said that she was not given this land to plant rice: that it was her husband's land and was given to her son the first appellant. Two persons gave evidence on behalf of the plaintiff. They were both members of the panchayat which was called concerning the dispute. One of them testified to the fact that he had previously seen the respondent working this land, but since 1973 it had been worked by the first appellant. The learned magistrate believed that the land had formerly belonged to the respondent and that he gave the second appellant a licence to plant rice on it in 1972, and that he later extended the licence until 1974, and he held that the appellants were trespassers.

The appeal is grounded first upon the allegation that the magistrate had no jurisdiction because there was a question of title involved and secondly upon the allegation that the verdict was against the weight of evidence in that the Respondent has not established his title to the land, that the magistrate assessed credibility on hearsay evidence, that he based his verdict rather upon what the evidence should have been than what it actually was, that there was no evidence that second appellant was a trespasser and finally that there was not sufficient evidence to support the verdict.

The first question is as to the magistrate's jurisdiction, and counsel for the appellants submit that this question comes within the proviso to section 16(1) of the Magistrate's Court Act. The section provides that a magistrate shall have jurisdiction in several matters inter alia

/3.

"(a) (i) in all personal suits arising out of any accident in which any vehicle is involved where the amount, value or damages claimed, whether as a balance claimed or otherwise, is not more than three thousand dollars;

(ii) in all other personal suits, whether arising from contract, or from tort, or from both, where the value of property or the debt, amount or damage claimed whether as a balance claimed or otherwise, is not more than two thousand dollars;

(b) (i) in all suits between landlords and tenants for possession of any land (including any building or part thereof) claimed under any agreement or refused to be delivered up, where the annual value or annual rent does not or did not exceed two thousand dollars;

(ii) in all suits involving trespass to land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof);

(bb) in any type of suit covered by paragraphs (a) and (b) of this subsection, whatever the value, amount, debt, damages sought to be recovered is, or whatever the annual value or annual rent is, if all the parties or their respective barristers and solicitors consent thereto in writing:

Provided that where any such suit has already been commenced in the Supreme Court it may only be transferred to a first class magistrates' court with the prior consent of the Supreme Court."

It then goes on with other powers as far as (h) and then there is a proviso reading 'Provided that a Magistrates' Court shall not exercise jurisdiction-

(i) in suits wherein the title to any right, duty or office is in question; or

(ii) in suits wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or

(iii) in suits wherein the legitimacy of any person is in question; or

(iv) except as specifically provided in the Matrimonial Causes Act 1968 or any other Act for the time being in force, in suits wherein the validity or dissolution of any marriage is in question; or

(v) in any action for malicious prosecution, libel, slander, seduction or breach of promise of marriage."

Dr. Sahu Khan submits that here there is in question the title to a right to own land.

I think that the best way of testing that argument is to look at the development of this section 16. As originally contained in the ordinance of 1944, this section continued a subsection (4) which read

> "If in any suit or matter before a Magistrates' Court the title to any land is disputed or the question of the ownership thereto arises, the Court may adjudicate thereon if all parties interested consent, but if they do not all consent, the presiding magistrate shall apply to the Supreme Court to transfer such cause or matter to itself."

With that subsection in the statute, I do not think that it can be seriously argued that the proviso (1) deals with a right to own land. It clearly deals with the title to any right duty or office otherthan a right to hold land. Now in 1973 when subsections (b) and (bb) appeared in the statute subsection 4 was repealed. Again it seems to me obvious that the introduction of those sub-sections served to extend the powers of magistrates and it would seem to me to have been a corollary of their introduction that ss.4 was no longer required, and it was repealed. The result is, I think, that in actions involving trespass to land or the recovery to land, irrespective of the value of the land, and irrespective of whether there is a dispute as to title, where there has never been a relationship of landlord and tenant the magistrate has jurisdiction. It is not suggested in this case that any relationship of landlord and tenant existed. This particular suit can certainly be described as either involving trespass to land or for the recovery of land, even though the claim to recovery is worded somewhat obscurely. Of course an action does not necessarily involve trespass or a question of title because a party says so. Here the appellants say that the title to land is involved. Prima facie that is not so, and hence the onus of proof will lie upon the appellants. They were unable to satisfy the magistrate that this was not a case involving a trespass to land, or for the recovery of land. In any even a dispute as to the identity of land is not a dispute as to title. That ground of objection fails.

However, Dr. Sahu Khan takes another point - one not taken before the learned magistrate, that the remedy of a declaration is not appropriate to a Magistrates' Court. The Statement of Claim, as amended on 1st June 1976 asks for three items of relief

(a) a declaration that defendants are trespassers

(b) a declaration that the defendants be restrained from entering and unlawfully working the farm belonging to the plaintiff

(c) a declaration that the defendants are trespassers and as such the defendants give vacant possession to the plaintiff.

I find it difficult to imagine a more obscure pleading. The second prayer is really not for a declaration at all, but for an injunction, although no mention of injunction is made anywhere in the writ or the Statement of Claim. Likewise the mention in the third prayer of a declaration is tautologous. That has already been asked for, and if it is held that defendants are trespassers, it might be expected that the plaintiffs would be entitled to vacant possession. Nevertheless in my view, Mr. S.R. Shankar when he ended up his address by asking for possession, costs and damages, was clearly misleading the Magistrate. Damages had not been mentioned from beginning to end, and possession could only be asked for by ignoring the tautology. The appellants relied on R v Cheshire County Court Judge ex parte Malone (1921) AER Reprint 344. That was a case in which it was held that the English County Courts Act did not permit the use of a declaration except as an ancillary remedy, and, of course, if the Fiji Magistrates Courts Act is anything like the English County Courts Act, that case would be a very persuasive precedent. It was alleged in that case that the plaintiff had been unlawfully expelled from his trade union and had been unable to get work. He had suffered damage through loss of wages, but his damage would have been in excess of the amount which could be claimed in a county court. He claimed

(a) a declaration that the resolution expelling him was ultra vires and contrary to public policy and

(b) an injunction restraining the trade union from acting on the resolution.

The injunction was refused because it did not appear on the face of the proceedings that the amount of damage sustained was necessarily within the scope of the county court and that there was no power to make a declaration when there was no independent action within the jurisdiction. The judgments in the Court of Appeal rested mainly upon the ground that any right to injumctions or declarations was in aid of the relief which a country court had power to give. However the Fiji statute is very different from the English statute. A Fiji magistrate has jurisdiction in running down cases up to $3,000, and in other actions in contract or tort up to $2,000. His jurisdiction in suits involving land has already been

referred to. Then he has power to issue writs of habeas corpus, to deal with custody of infants, to grant injunctions to restrain torts or breaches of contract, to enforce attachment and commit to prison for debt. Finally he is given jurisdiction in all other suits and actions in respect of which jurisdiction is given either by the statute or any other written law. Then there is a reservation concerning five specified matters of which one is the title to an office already reffered to. In addition to all that section 27 deals with legal and equitable jurisdiction. I shall set out subsection (2) of that section:

> "A Magistrate in the exercise of the jurisdiction vested in him by this Ordinance 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 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."

I contrast this with the opening words of the corresponding section in the English County Courts Act

> "Every inferior court which now has or which may after the passing of this act have jurisdiction in equity or at law and in equity and in admiralty respectively shall as regards all causes of action within its jurisdiction for the time being have power to grant and shall grant, etc."

Clearly the jurisdiction of the County Court is limited by the County Courts Acts 1888 to 1903 and was at that time very limited indeed, although it was vastly enhanced in 1959. Clearly also, an injunction could have been granted in this case by the learned magistrate, to restrain trespass to land irrespective of the value of the land. The remedy of declaration was available to the learned magistrate in view of the wide provisions of section 27(2) of the Magistrates Courts Act.

But that is not what the learned magistrate did. He made an order for possession. That order was sought as ancillary to a declaration that the defendants were trespassers, and it seems to me that section 27 provided him with ample authority to make such an order which had as its purpose completely and finally determining the matter in controversy between the parties and the result of avoiding further proceedings - a result, I may say which would not be achieved were I to take the course suggested by counsel for the appellants, and hold that the action should have been taken in this Court.

/7.

I come, then, to the appellants' argument on the score of the evidence. Dr. Sahu Khan's first point is that the plaintiff respondent failed to establish his title to this disputed land, and he refers to Danford v McAnulty (1883) 8 A.C. 456 of which the headnote reads "In an action for the recovery of land a statement of defence alleging that the defendant is in possession operates as a denial of the allegations in the plaintiff's statement of claim and requires the plaintiff to prove them." I accept that statement to be the law. I observe, however, that this only applies to an action for the recovery of land. Dr. Sahu Khan says that this is not an action for the recovery of land but a question of title, but I have held against him there. The plaintiff produced an approval to lease, which was his title. It is true that it is subject to survey. He said he had been on the land for 25 years, and he said that he had put the defendants on his land. All he has to do is to prove that he is entitled to recover the land as against the defendants in possession. It seems to me that the burden then passed to the defendants who sought to support their case by denying that the plaintiff had put them in possession and by asserting a completely different title. The onus of proof of that was on them. The learned magistrate believed the plaintiff's evidence. I can see nothing in this point. Then Dr. Sahu Khan argues that part of the evidence given about the panchayat is hearsay, although he concedes that Kottaiya's evidence is admissible. While some of what Keshwan Sharma said is certainly hearsay, his evidence shewed that he went to see both defendants - certainly separately - and he has told the Court what they said. What Murarilal said to him is evidence only against Murarilal. What Indar Bas said to him is evidence only against her. There is nothing to shew that the learned magistrate was unable to distinguish the hearsay from the admissible. The evidence he referred to in his judgment is clearly admissible. Then Dr. Sahu Khan says there is no evidence that second defendant is a trespasser. The plaintiff's evidence which was accepted by the Court is that he gave the land to Indar Bas. She allowed her son to go on to it. Both she and her son refuse to give up possession. In my view she is clearly a trespasser and judgment was rightly given against her. I can see nothing to indicate that the magistrate did not take a proper view of the evidence. The appeal will be dismissed and the appellant will pay costs.

LAUTOKA,
1st March, 1978.

(sgd.) K.A. Stuart
JUDGE