Privy Council Appeal No. 48 of 1946

Yenkanna – – – – – – – – – – *Appellant*

v.

Achanna – – – – – – – – – – *Respondent*

FROM

THE SUPREME COURT OF FIJI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH FEBRUARY, 1948

Present at the Hearing :

LORD SIMONDS
LORD MORTON OF HENRYTON
SIR MADHAVAN NAIR

[*Delivered by* LORD SIMONDS]

In this appeal, which is brought from the Supreme Court of Fiji, their Lordships find themselves so fully in agreement with the reasoning and conclusion of the learned Chief Justice that they can dispose of the matter somewhat shortly.

The question for determination in the appeal is whether a certain transfer of a piece of land in Nadroga, Fiji, of an area of some 431 acres, which was made in favour of the appellant by the respondent on the 13th December, 1941, was made, as the appellant contends, by way of outright sale to the appellant so that he was at all times thereafter the beneficial owner thereof, or was, as the respondent contends, made by way of security and upon terms which in effect made the appellant a trustee for the respondent of the land and any proceeds of sale thereof, after certain mortgages, to which the land was subject, had been satisfied.

The relevant facts are briefly as follows. In the year 1933 the respondent had bought a piece of land of an area of about 456 acres in the district of Nadroga for the sum of £700, and had forthwith mortgaged it to a Company called Vatu Investments Limited for the amount of the purchase money.

At a subsequent date he sold 25 acres and was left with 431 acres.

At some time before 1941 the respondent got into difficulty with his mortgagees who called in the mortgage, and being in that difficulty he applied to the appellant with whom it appears he was on very friendly terms, so much so that he referred to him as his son-in-law though that was not the precise relationship in which they stood; his daughter had gone to look after the appellant's children. They were at least on such friendly terms that the respondent thought right to have recourse to him in his difficulties.

He visited him and as a result he signed a transfer in favour of the appellant on the 18th December, 1941, by which the appellant became the transferee of the land in question and was duly registered as proprietor thereof. The consideration stated in the transfer was the nominal sum of 1s. but no doubt as the effect of the relevant ordinance a further consideration was the implied covenant by the transferee to pay the mortgage and indemnify the transferor.

It is in regard to this transfer that a conflict of evidence has arisen between the appellant and the respondent, but before reference is made to that it must be observed that from 1941 for a period of 18 months, the respondent remained in possession of so much of the property as was not in lease, and cultivated it paying no rent to the appellant.

In 1943, the dispute between the parties arose in this way. In June of that year a sale was negotiated of part of the property to the Roman Catholic Mission for the sum of £1,000. The area to be sold was practically 267 acres, and the evidence showed that the part remaining unsold was of greater value than that which was sold.

That sale having been thus negotiated (and both the respondent and the appellant appear to have had some part in the negotiations which led to the sale) was duly completed and there was money available to pay off what was still due on the mortgage, and to leave a balance of some £500 over. Therefore the result of this transaction was that there was a quantity of valuable land still unsold and £500 available for whoever was entitled thereto.

The respondent alleged that he was entitled and set up the account which has already been given of the transaction. The appellant, on the other hand, claimed that he was entitled to the money and to the land that was left, alleging, as has already been stated, that he was the beneficial owner. Issue was joined, the action being brought by the respondent for the purpose of determining his rights.

The learned Chief Justice had first to decide the issue of fact, and having before him the whole of the relevant evidence which the parties thought fit to adduce, including their own testimony, came to the conclusion that the story told by the respondent was true and that told by the appellant was untrue. It is unnecessary for their Lordships to consider in detail the evidence which he reviewed; they are satisfied that the conclusion to which he came was one which cannot possibly be displaced by an Appellate Court. There was ample ground for him coming to that conclusion, and it is to be observed that the final reason for it was this, to use his own words: " As a witness the plaintiff," that is the respondent, " struck me as being honest, albeit somewhat stupid, while the defendant," that is the appellant, " I thought untruthful."

In these circumstances, their Lordships must take it as a fact, established beyond all challenge, that the story told by the appellant was untrue and that told by the respondent was true.

The appellant, however, claims that even if the story which he set up is untrue and he in fact took the property as transferee upon the trust alleged by the respondent, yet he is entitled to assert an indefeasible beneficial title under the provisions of the Land (Transfer and Registration) Ordinance No. 14 of 1933.

The section upon which he relies is Section 14: " The instrument of title of a proprietor issued by the Registrar upon a genuine dealing shall be taken by all Courts of Law as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to have been a party or on the ground of adverse possession in another for the prescriptive period."

To that plea the Chief Justice found a complete answer in the case of *Rochefoucauld* v. *Boustead* reported in 1897, 1 Chancery, page 196. A single passage only from the judgment need be cited. On page 206 Lord Justice Lindley, as he then was, delivering the judgment of the Court, said this: "It is further established by a series of cases, the propriety of which cannot now be questioned, that the Statute of Frauds does not prevent the proof of a fraud; and that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself."

Applying that principle, which is of wide application, to the facts of this case, their Lordships are clearly of opinion that it would be a fraud within the meaning of Section 14, if the appellant, knowing that the land had been transferred to him as trustee, was to be allowed to allege an absolute beneficial title regardless of the trust. That is a plea which the learned Chief Justice, as their Lordships think, rightly rejected.

In their Lordships' opinion, the judgment of the Chief Justice must be sustained, and this appeal dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council

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v.

ACHANNA

DELIVERED BY LORD SIMONDS

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