IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 82 of 1984

Between:

SHAKUNTALA DEVI
d/o Sarju Prasad — Appellant

and

1. JAI MANGAL
2. SHIU RAJ
both sons of Ram Narain — Respondents

Mr. S. Prasad for the Appellant
Mr. B.C. Patel and Mr. C.B. Young for the Respondents

Date of Hearing: 8th July, 1985

Delivery of Judgment: 20.7.85

JUDGMENT OF THE COURT

Mishra, J.A.

This is an appeal from the decision of the Supreme Court, Lautoka, which in essence, declared a certain leasehold property, Native Lease 7538, to be the property of the estate of one Ram Narain s/o Bhalak, of which the respondents are administrators, and not that of the estate of Hansraj s/o Ram Narain of which the appellant is the administratrix.

Ram Narain died on 17th December, 1948, leaving 6 sons and 5 daughters, Hansraj being the eldest son.

His only asset was Native Lease 7538 comprising some 56 acres of agricultural land. He left no will and no letters of administration were taken out either by his widow or by any of his children until after Hansraj's death in 1979. The lease 7538 expired on 13th September, 1964. On 21st December, 1966, Hansraj received a letter from the lessor, the Native Land Trust Board (Board), addressed to him as administrator of the estate of Ram Narain granting him a tenancy-at-will of this land. On 7th November, 1974, an approval notice was issued by the Board to him in respect of this very land in the following terms :-

> " I have to inform you that your application for renewal of your lease ..... registered as lease No. 7538 has been approved by the Native Land Trust Board on the following conditions :
>
> Period 10 years from 1.1.1970. "

Then follow area, rent and other conditions. In this notice, however, Hansraj was not described as administrator of the estate of Ram Narain.

Between the issue of the tenancy-at-will and that of the approval notice, the sons of Ram Narain including Hansraj himself had, in 1973, applied to the Board for leases of portions of this very land in their personal capacity, Hansraj's application being for an area of approximately 12 acres. The Estate Officer of the Native Land Trust Board testified that there was nothing on the Board's records to show that these applications were ever processed. The appellant's counsel, however, invited the learned Judge to hold that the approval notice of 7th November, 1974, issued to Hansraj in his personal capacity was in response to his application for a new lease and that the Board gave him all of 56 acres instead of the 12 acres he had applied for.

The learned Judge rejected the submission and held that the approval notice was what it proclaimed itself to be viz a renewal of the Native Lease 7538, such a renewal, being in compliance with the provisions of the Agricultural Landlord and Tenant Ordinance which had been enacted in 1966.

He granted the following declarations and orders sought by the respondents :-

"(a) A declaration that Hansraj Father's name Ram Narain was at all material times the executor de son tort of the estate of Ram Narain Father's name Bhalak.

(b) A declaration that the Approval Notice granted in renewal of Native Lease 7538 is the property of the estate of Ram Narain Father's name Bhalak.

(c) A declaration that the first defendant is the trustee of the said Approval Notice for the estate of Ram Narain Father's name Bhalak.

(d) An Order against the second defendant for the cancellation of the said Approval Notice and issue of a fresh Approval Notice on like terms in the name of the plaintiffs as administrators of the estate of Ram Narain.

(e) An Order against the first defendant for accounts of all monies received from the third defendant since 11th July 1929.

(f) An Order against the first defendant for payment to the plaintiffs of all monies received by her from the third defendant.

(g) An Order restraining the third defendant whether by itself or their servants or agents from paying the proceeds of Farm 18210 Lautoka Sector to the first defendant until determination of this action. "

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Ground 1 and 8 of the appeal, argued together are in the following terms :-

> "1. The Learned Trial Judge erred in law and in fact in holding that Hansraj father's name Ram Narain was at all material times executor de son tort of the estate Ram Narain son of Bhalak.
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> 8. The Learned Trial Judge erred in law and in fact in holding that late Hansraj stood in a fiduciary position between his other brothers. "

Direct evidence relating to these grounds are somewhat sketchy. After Ram Narain's death the respondents, mere children, continued to live on the land with their mother. In 1957, some ten years later, a dispute as to apportionment of land arose among the brothers and the family sought the assistance of the local Welfare Committee, a voluntary organisation. It advised, and the members of the family including Hansraj agreed, that four of the brothers including the respondents should live on lease No. 7538 and each cultivate the portion allotted to him by the committee. Hansraj was to live on a piece of adjoining land left to him by their paternal grandfather and the sixth brother was to occupy another piece of land left to them by their maternal grandfather. According to the evidence given by the Secretary of the Committee the four brothers have remained on the land ever since each cultivating his own portion of it.

The learned Judge accepted the evidence of the respondent Jai Mangal that Hansraj, being the eldest brother, continued to act as the head of the family and attended to payment of rent and other matters requiring a lessee's attention. No letters of administration, however, were applied for.

In 1979, Hansraj obtained from the Fiji Sugar Corporation a cane contract under which sugar cane grown on this land was to be purchased by the Corporation. This contract, like the approval notice of 1974, refers to Hansraj in his personal capacity - not as administrator of the estate of Ram Narain. When the first payment for the sugar cane was received from the millers, however, Hansraj distributed it among the four brothers who had grown it. Soon afterwards he died. His widow, as administratrix of his estate refused to recognise any of Ram Narain's children as having any beneficial interest in lease 7538 and treated it solely as the property of her husband's estate.

The two respondents thereafter applied for letters of administration of the estate of Ram Narain and instituted these proceedings.

The appellant, in support of ground 1, submits that there was no evidence whatsoever of meddling by Hansraj in the affairs of his father's estate to support the assertion that he was an executor de son tort. He, says Counsel, lived away from lease 7538 and minded his own business exercising no control over the land cultivated by the four brothers.

He points out, quite correctly, that no receipts have been produced to show who paid the rent for lease 7538 until its expiry, the only receipts before the court being for the period 1974 - 1979 when the land was held under the approval notice and these show the rent to have been paid by the four brothers themselves. There is, however, Jai Mangal's sworn evidence that at the time of Ram Narain's death the respondents were mere children and Hansraj alone dealt with the Board. The fact that in 1966 a tenancy-at-will was issued to Hansraj as administrator of the estate of Ram Narain also strongly suggests that the

Board then recognised him as the person handling the affairs of his deceased father. If, as the learned Judge has held, this land was still trust property in 1974 when Hansraj accepted the approval notice in his own name, he was clearly inter-meddling with the assets of the estate. Slightest acts of interference with the assets of an estate would suffice to support a claim against a person being an executor de son tort and in this case there was ample evidence of this nature accepted by the learned Judge.

Counsel for the respondents submits, and we concur, that the claim for declaration (a), though successful, was not really essential to the relief they were seeking. The main thrust of their argument lay in their claim for declarations (b) and (c), whereby they sought to establish that lease 7538 had always remained the property of the estate of Ram Narain held in trust for the beneficiaries of that estate by Hansraj until the time of his death and, now, by his administratrix, the appellant.

That, in our view, is the central issue even in this appeal.

Lease 7538 expired on 13th September, 1964. About that time there was under consideration by the Government the need for legislation which would give the tenants of agricultural land greater security of tenancy and curb drastically the powers of lessors of such land, the Board being the biggest of such lessors. It is not surprising, therefore, that nothing was done in respect of this lease until the legislation, the Agricultural Landlord and Tenant Ordinance (the Ordinance) was passed by the Legislature on 27th July, 1966. It gave, in certain circumstances, persons occupying and cultivating agricultural land a statutory right to tenancy. In the present case though the lease had expired the estate of

Ram Narain had been in occupation of this land since 1964 with the Board's knowledge and consent.

On 21st December, 1966 a tenancy-at-will was issued to Hansraj as administrator of that estate to take effect from the date of the expiry of the lease. The Ordinance was brought into operation on 29th December, 1966. "Tenancy" under the Ordinance includes a tenancy-at-will. Under the provisions of the Ordinance the person occupying the land in such circumstances would be entitled to a lease or a contract of tenancy provided rents covering the period of occupation were paid.

The land had been inspected by the Board's personnel on 28th April, 1966 and "Ram Narain (deceased)" is recorded as the lessee with a note that a son "Bansraj" was administering the affairs of the deceased. In 1969 a recommendation was made that the lease be "renewed" at an increased rental in the name of "Hansraj". No mention was made of him as an administrator of the estate of Ram Narain.

When on 7th November, 1974 the approval notice, referred to earlier in this judgment was issued to Hansraj, the renewal was to be a period of 10 years from 1st January 1970, the minimum period specified in the Ordinance for such a lease, the date of the commencement of the period being two days after the Ordinance had come into operation. Furthermore, the approval notice, inter alia, stated as follows :-

> " The renewed lease will be subject to the conditions set out in the Native Land (Leases and Licences) Regulations, and where applicable the Agricultural Landlord and Tenant Ordinance, a summary of which conditions appears on back hereof.
>
> Renewal of lease document will be prepared in due course for execution and registration. "
>
> (Emphasis ours)

The renewal was -

"Subject to the payment of the sum of $38.78 being arrears of the rent to 31/12/69. "

To our mind any confusion over "Bansraj" and "Hansraj" in the inspection report and the recommendation by the Board's officials is immaterial. There can hardly be any doubt that what the Board intended to, and did, do was to renew lease 7538 to the person occupying the land as tenant-at-will since the expiry of the lease viz to the estate of Ram Narain (deceased). Arrears of rent charged for the period prior to the commencement of the lease cannot be explained in any other way. Counsel for the Board would appear to have conceded as much when he stated that the evidence pointed to a renewal rather than to the grant of a new lease.

We are unable to accept the appellant's submission that the approval notice amounted to granting a new lease of the land to Hansraj in his personal capacity and that the notice had the effect of terminating the tenancy-at-will granted to him as administrator of the estate of Ram Narain. We are satisfied that the tenancy-at-will with effect from the date of the expiry of lease No. 7538 was issued in anticipation of the pending legislation affecting the Board's powers. The subsequent issue of the approval notice is a renewal of lease 7538 for a period of 10 years from 1st January, 1970 in compliance with section 4 of the Ordinance and the lease, therefore, was and has remained the property of the estate of Ram Narain. The appellant, as administratrix of the estate of Hansraj holds the lease in trust for the beneficiaries of the estate of Ram Narain of whom Hansraj himself was one.

When the tenancy-at-will was issued to Hansraj as administrator of the estate of Ram Narain he was certainly

placed in a fiduciary position in relation to the beneficiaries of that estate. In our view, he retained that position after he received the approval notice which, for some reason not fully explained, omitted to describe him as an administrator.

No deliberate wrong-doing is established against Hansraj. In fact the evidence suggests that he himself may, right to the time of his death, have regarded himself as being in the position of a trustee. Lack of fraud, however, does not in any way alter the situation. As Viscount Sankey said in Regal v. Gulliver (1942 1 All E.R. 378 at 381) :-

> "In my view, the respondents were in a fiduciary position and their liability to account does not depend upon proof of mala fides. The general rule of equity is that no one who has duties of a fiduciary nature to perform is allowed to enter into engagements in which he has or can have a personal interest conflicting with the interests of those whom he is bound to protect. If he holds any property so acquired as trustee, he is bound to account for it to his cestui que trust. "

Having reached this conclusion on the basic issue we consider it unnecessary to deal specifically with the other grounds of appeal which are, in any case, sufficiently covered by this judgment. We are satisfied that the learned Judge was correct in making the declarations and orders sought by the respondents and, consequently, dismiss the appeal with costs to be taxed in default of agreement.

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VICE PRESIDENT

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JUDGE OF APPEAL

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JUDGE OF APPEAL