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IN THE FIJI COURT OF APPEAL
(AT SUVA)

CIVIL JURISDICTION

CIVIL APPEAL NO.7 OF 1990
(HIGH COURT ACTION NO.437 OF 1981)

BETWEEN:

MOHAMMED RAFIQUE
f/n Mohammed Ibrahim — Appellant

AND

HAJI MOHAMMED HANIF &
SHAH MOHAMMED both s/o
Mohammed Ali
POPULAR FURNITURE LTD. — Respondents

Dr. Sahu Khan — for Appellant
Mr. C.B. Young — for Respondents

Date of Hearing : 11th November, 1992
Date of Delivery of Judgment: 18th November, 1992

JUDGMENT OF THE COURT

The Appellant commenced an action in the High Court in which he claimed to recover from the Respondents the sum of $13,500 being the price of a truck sold to them. In the course of the hearing it was acknowledged that certain payments had been made to the Appellant, and in the end the only matter in issue concerned a sum of $3,810 which the Appellant claimed to have paid to the Third Respondent and which he sought to recover.

This issue of fact was resolved by Sadal J. in favour of the Respondents and he accordingly held that there was no money owing by them to the Appellant and gave judgment for the Respondents. From this judgment the Appellant now appeals.

As the issue was solely one of fact and turned largely on the matter of credibility the Appellant faced a formidable task. In reliance on the decision in Watt (Thomas) v Thomas (1947) 1 All E.R.582 it was argued, however, that the Judge had erred in a number of respects in his account of the evidence and had also failed to take into account certain matters which ought to have affected his findings as to the credibility of witnesses and so brought him to a different conclusion.

In support of his claim to recover $3,810 the Appellant produced a photocopy of receipt No.4946 which was on the printed receipt form of the Third Respondent and on its face showed the receipt from the Appellant of $3,810. The Appellant in evidence said that this receipt was in the handwriting of Mahmood Ali who was at the time the Third Respondent's cashier.

Mahmood Ali gave evidence on behalf of the Respondents and denied that he had received$3,810 from the Appellant. He said that the amount received on that occasion was $10. He produced the receipt book from the company's records and the carbon impression of receipt No. 4946 shows that it was for $10.

He said further that the receipt was not made out in his handwriting, but was a forgery. In the course of his duties as cashier and in reliance on the receipt book he had entered this receipt of $10 in the ledger card and summary book which were part of the company's records. Evidence was also given that there was no shortage of cash at that time which would have been the case if there had been a discrepancy of $3,800 between the amount received and the amount for which a receipt was given.

On a consideration of all the evidence, including the documentary exhibits, Sadal J. held that the Appellant had not proved the payment of $3,810 but only of $10.

We think it necessary to preface our consideration of the particular matters raised on behalf of the Appellant with some general comments on an appeal of this nature.

In reviewing a judgement given on an issue solely of fact it will be rarely that no criticism at all can made of the particular statement of the facts and the specific matters upon which the trial Judge has appeared to rely. Regard must always be had to the need for cases to be disposed of with expedition and the time available to the Judge to express his reasons with the care and precision that he may wish.

In the present case the hearing of what was a relatively straightforward issue of fact took place on 12 September 1988 and it was not until 8 December 1989 that the Judge was able to deliver his judgement. It is perhaps not surprising that the reasoning then given was somewhat lacking in precision. What emérges clearly, however is that the Judge had formed a firm view as to the credibility of the witnesses and the reliance which he placed on the principal features in the evidence. This Court will not lightly substitute its own view of the evidence for that of the trial Judge. It is against this background that we now consider the main submissions made to us in support of the appeal.

1. It was argued that the Judge erred when he stated that "the plaintiff did all the banking", and that there was no evidence to support that finding. It is true that the evidence did not establish that the Appellant did "all" the banking, but there was evidence that he at least did some of it, and in particular during the time that Mahmood Ali was cashier. There seems little doubt that it was in that context that the Judge's finding was made.

2. An issue in the case concerned the allegation that Mahmood Ali had stolen $2,000 and was therefore to be regarded as an unreliable witness. For the Appellant reference was made to the evidence of Keshwan Krishna, a former accountant to the Third Respondent, who, under cross-examination had said

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that Mahmood Ali had once stolen $2000 and that Mahmood Ali "gave in writing to Popular Furniture that he would pay the money." It was argued that this "writing" ought to have been produced in evidence. If, however, that was regarded as a possibly significant document from the point of view of the Appellant's case then it might have been expected that the Appellant would have called for its production. The failure of the Respondents to volunteer it does not seem to us a matter affecting the decision which was made.

3. Considerable importance was attached for the Appellant to a document (Ex.1A) which recorded an order for payment to the Appellant of $13,500 for the purchase of a truck. This document, which is dated 25 March 1991 relates to the transaction which formed the basis of the action. The Appellant's original claim was that he had sold the truck to the Respondents and had not received payment of the purchase price of $13,500. Ex.1A recorded that transaction and also showed that the Appellant had received an initial payment of $5,622.20. The document then has the note "Balance $7,887.80." The contention was that, the Appellant had eight months earlier, namely on 26 July 1980, paid $3,810, and this fact had not been taken into account by the Judge.

We note that the balance of $7,877.80 was the amount remaining owing to the Appellant for the purchase of his truck, and that amount was later paid or credited to him. We are unable to attach any significance to Ex.1A and do not consider that it demonstrates any basic error on the part of the Judge.

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There is no doubt that there are some puzzling features about this case because of the conflict between the form of receipt relied on by the Appellant and the carbon impression of the same numbered receipt. It seems inescapable that one or the other had been tampered with. This, however, was obvious throughout and the Judge had to resolve the conflict as best he could on the basis of the oral and documentary evidence which he had. We are not persuaded that the Judge's reasoning was so plainly wrong that we ought to interfere.

The appeal is dismissed with costs.

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Mr. Justice Michael M. Helsham
President, Fiji Court of Appeal

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Sir Peter Quilliam
Judge of Appeal

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Mr. Justice Arnold Amet
Judge of Appeal