

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0032 OF 1996
(High Court Civil Action No. HBC0359 of 1995)

BETWEEN:

BAL RAM PANDE
DEVENDRA KUMAR PANDE

APPELLANTS

-and-

JAI RAM SINGH
THE SUGAR INDUSTRY TRIBUNAL

RESPONDENTS

Mr. V. Mishra and Mr. S. K. Ram for the Appellants
Dr. Sahu Khan for the Respondents

Date and Place of Hearing : 20 August 1997, Suva
Date of Delivery of Judgment : 22 August 1997

JUDGMENT OF THE COURT

The first appellant is the registered owner of a plot of land, CT 17632, lot 6 on DP No. 4997 at Nasoso, Nadi. The first respondent has occupied and farmed approximately 11 ¼ acres of that land since 29 January 1974.

Following application by the first respondent for a declaration of tenancy, the Central Agricultural Tribunal declared, in April 1982, that the first respondent "is a

tenant of the (appellant) in respect of the land ... as from 29 January 1974" and remitted the case to the tribunal to fix the rent.

There followed a series of legal proceedings and negotiations between the parties until, on 27 July 1990, an instrument of tenancy was executed between the first appellant and the first respondent whereby the land was "to be held by the said Jai Ram Singh as tenant for the term of 20 years commencing on the 29th day of January 1974 ...".

Further proceedings have taken place since including the action before Lyons J which gives rise to this appeal. In it, the respondent sought various declarations, orders and damages but with, it appears, the agreement of both parties, Lyons J dealt with the case as an application for a declaration as to the effect of the instrument of lease executed by the parties on 27 July 1990. The learned judge summarised the arguments as follows:-

"The essence of the Plaintiff's claim is that a lease was executed in respect of the C.A.T. Decision. This lease was for a 20 year term. The Plaintiff claims he is now entitled to an automatic extension pursuant to s.13 of the Agricultural Landlord and Tenant Act (ALTA) Cap.242. He also seeks other relief that is not relevant to this application. The Respondent joins the Plaintiff in seeking a declaration as to the general effect of the said lease as a preliminary issue to this matter generally and also to the Respondent's Summons filed on the 23rd November 1995 seeking eviction. ... The Respondent for his part claimed that the instrument of tenancy provides only for one of a 20 year period which expired on the 28th January 1994."

In his Decision delivered on 12 July 1996 he declared that:-

"the instrument of tenancy between the Plaintiff and the 1st Defendant (Respondent) dated the 29th July 1990 ... made pursuant to a Decision of the Central Agricultural Tribunal of the 29th April 1982, is a tenancy for an initial period of 20 years commencing the 29th January 1974 until the 28th January 1994 ... and thereafter a tenancy for a further extension period of 20 years until the 28th January 2004 (sic) pursuant to the provisions of Section 13 ..."

The appellant appeals on the following grounds:-

1. The Learned Judge erred in law and/or in fact in holding that the Instrument of Tenancy was for an initial period of 20 years.
2. The Learned Judge erred in law and in fact in holding there was a Tenancy for an initial period of 20 years and that the First Respondent was entitled to extension of further 20 years when:
 - a. the Agricultural Landlord and Tenant Act only provides for a Tenancy of 10 years with a 20 year extension.
 - b. the Instrument of Tenancy itself was signed in 1990 which is well after the initial period of 10 years which commenced from 23rd day of January 1974.
 - c. a Tenancy for 20 years from 23rd day of January 1974 prepared by the First Respondent's Solicitors has been signed and registered with the consideration stated therein.
 - d. the statutory extension period of 20 years had already commenced when the Instrument of Tenancy was signed and when the document itself did

not say that the instrument itself was of an initial period of 20 years with the benefit of a 10 years extension after the expiry of the initial period.

- e. when there was evidence that there had been negotiation on the terms of the lease and when the Respondent had accepted 20 years for the full period of his tenancy.
3. The Learned Judge erred in fact and/or in law in not taking into account and holding that the Respondent and the Appellant could under s.44 of the Agricultural Landlord and Tenant Act agree to a total term of 20 years.
 4. That the Learned Judge erred in fact and/or in law in:-
 - a. adding an extra 10 years to the statutory minimum period of 30 years when there was no consideration for the same or any meeting of minds on the same.
 - b. in implying in initial period of 20 years into the contract between the parties when the same was not necessary to give the contract business efficacy.
 5. The Learned Judge erred in fact and/or in law and misdirected himself as to the onus of proof and that the onus of proof in the case was on the Plaintiff.
 6. ...

7. The Learned Judge erred in law and/or in fact in not taking into account that for an additional 10 years, other than those provided by statute, contractual principles had to be applied.

Ground 6 was not pursued and, at the hearing, grounds 1, 2, 4 and 7 were argued together.

The appellants accept that the instrument of tenancy states it is for a period of 20 years from January 1974 and that commencement date brings it within the terms of s.13 of ALTA.

Section 13(1) provides:-

"13-(1) Subject to the provisions of this Act relating to the termination of a contract of tenancy, a tenant holding under a contract of tenancy created before or extended pursuant to the provisions of this Act in force before the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976, (1 September 1977) shall be entitled to be granted a single extension (or a further extension, as the case may be) of his contract of tenancy for a period of twenty years, unless-

- (a) during the term of such contract the tenant has failed to cultivate the land in a manner consistent with the practice of good husbandry; or*
- (b) the contract of tenancy was created before the commencement of this Act and has at the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 an unexpired term of more than thirty years:*

Provided that, notwithstanding the provisions of section 14, a premium equivalent to one year's rent shall be payable in full in advance on the first day of the first year and of the eleventh year of such extension."

The appellants' main submission is that, in order to qualify for an extension under that section, the 20 years term has to be the original tenancy. That is, of course, correct but, despite what appears to this Court to be the clear meaning of the instrument of tenancy, the appellants suggest the learned trial judge could only have come to the conclusion the agreement was intended to make the original tenancy one of 20 years by reading it as saying "for the initial term of 20 years". They argue he should not imply such a term. We agree. The words are clear and unambiguous on the face of the instrument. There was no need to imply any term and neither do we consider the learned judge did so.

We do not consider it is necessary to go further but, out of deference to the researches of counsel, we shall deal briefly with their further argument on these grounds.

It is suggested that the term of 20 years could not have applied to the original tenancy because, as the Central Agricultural Tribunal declared a tenancy existed but did not state a term, it must be deemed one of 10 years by s.6(a). Section 6 provides:-

"6. Notwithstanding the provisions of any Act or agreement to the contrary but subject to the other provisions of this Act-

- (a) any contract of tenancy created after commencement of this Act but before the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 shall be deemed to be a contract of tenancy for a term of not less than 10 years;***
- (b) any contract of tenancy created after the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 shall be deemed to be a contract of tenancy for a term of not less than 30 years,***

and the provisions of this Act shall apply to any such contract."

By the time the instrument was executed in 1990, this period had expired and so it was submitted by the appellant that the agreement must have been for the original term of 10 years together with an extension of 10 years.

We cannot accept this suggestion. The Central Agricultural Tribunal declared a tenancy existed and it became necessary to draw up an instrument of tenancy. Had an agreement in the same terms as the instrument of July 1990 been drawn up at the time of the Central Tribunal's declaration, it would clearly have been a tenancy for 20 years. No implied term would have been necessary to read it as such and, at the completion of the 20 year tenancy, the right to extend for 20 years under s.13 would have been available.

It is correct, as the appellant points out, that the agreement was not executed in fact until more than 10 years had expired but what s.6 prescribes is a minimum term of 10 years. There is nothing in the Act to stop agreements for longer periods and the wording of the instrument drawn up in 1990 makes it plain the parties intended the tenancy to be for a period of 20 years commencing on 29 January 1974.

Grounds 1, 2, 4 and 7 all hinge on the same point and they fail. No implied term is necessary because the meaning is clear on the face of the instrument. It is for a period of 20 years from 29 January 1974. That was the date on which he first occupied the land and that is the date the Central Agricultural Tribunal stated the tenancy commenced as it was obliged to do under s.5. The agreement makes no reference to any other tenancy nor

to any extension and there is no evidence on which the learned trial judge could have based any other conclusion.

Ground 3 raises the right of the parties to a tenancy to terminate it by agreement. The appellants suggest s.44 allows the parties to agree to a shorter term than the Act otherwise allows. On the authority of Venkatamma v Ferrier-Watson and Ors, (CBV 2/92), Lyons J found the section gave the right to parties to an existing tenancy to terminate by agreement at a time earlier than that specified in the lease but it did not provide a means of avoiding the restriction on contracting out of the Act imposed by s.15. In any event he found no evidence to support the suggestion of the appellants that the agreement for 20 years was an agreement to terminate earlier than the provisions of the Act would otherwise have allowed.

As we have already stated, in our opinion the agreement could not have been more clear. It was for a term of 20 years. Nowhere does it lend support to any other suggestion. Nowhere is there any reference to it being partly or wholly an extension of the original tenancy nor is there any reference to an agreement to terminate otherwise than at the expiration of the specified term of 20 years.

Finally ground 5 deals with the burden of proof. Counsel for the appellants correctly suggest that the respondent, as plaintiff in the court below, bore the burden of proving the term of the original tenancy. They further suggest that, when the learned judge found a lack of evidence to support the appellants' contention the instrument was

expressing an intention to terminate the agreement under s.44, he was wrongly shifting the burden of proof onto the appellants.

We find no merit in that point. The burden was clearly on the plaintiff to prove the existence of a tenancy falling within the terms of s.13(1) and therefore the right to extend. It was also necessary in this case, as the original term had already been completed, to prove payment or tender of a premium equivalent to one year's rent in accordance with the proviso. The respondent produced evidence of those matters and the learned judge accepted it. It would have been remarkable had he done otherwise. It would be hard to think of better evidence than an unambiguous agreement for a 20 year tenancy signed by both parties.

The appellants dispute the apparently clear meaning of the document the first appellant had admittedly signed. It is little short of absurd to suggest that the result of their challenge is to throw an additional burden on the respondents to disprove every other possible, fanciful meaning. The learned judge was right to expect the appellants, as the party asserting the fact, to bear the burden of proving it. He was equally correct to take the view there was absolutely no evidence to support their contention.

This is yet another case where, following a clearly expressed judgment in the High Court, the case has been brought to this Court more from a blind refusal to accept any decision than from a realistic assessment of the merits of the appeal. The result is, inevitably, further delay and more costs wasted.

The appeal is dismissed with costs to the respondents to be taxed if not agreed.

Gordon Ward

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Mr. Justice Gordon Ward
Judge of Appeal

I. R. Thompson

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Mr. Justice I. R. Thompson
Judge of Appeal

J. D. Dillon

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Mr. Justice J. D. Dillon
Judge of Appeal