IN THE COURT OF APPEAL, FIJI ISLANDS
ON AN APPEAL FROM HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 0019/09
[High Court Civil Action No. HBC 297 of 2002L]

BETWEEN:	RAM GIR *Appellant*
AND:	Fiji Sugar Corporation Limited and The Attorney General of Fiji on behalf of Director Lands *Respondents*
Coram:	Hon. Justice Izaz Khan, Justice of Appeal Hon. Justice William Marshall, Justice of Appeal Hon. Justice Kankani T. Chitrasiri, Justice of Appeal
Counsel:	Mr. V. Mishra for the Appellant Mr. T. Tuitoga for the 1st Respondent Mr. R. Green for the 2nd Respondent
Date of Hearing:	Friday, 19th November, 2010
Date of Judgment:	Wednesday, 24th November, 2010

JUDGMENT

Izaz Khan, JA

1. The appellant has been in occupation of half an acre of land in Rarawai Ba known as Lot 287 Rarawai (CSR) which is the whole of the land in Certificate of Title 7822 since 1973.

2. The registered proprietor of Lot 287 is the Fiji Sugar Cooperation Ltd ("FSC") which is the successor in title to the original owner Colonial Sugar Refining Company ("CSR").

3. The appellant has given evidence to the effect that he bought the land as a result of a notice placed by CSR in 1973 informing the CSR employees that the land of which Lot 287 formed part would be subdivided and lots would be available to the employees.

4. His uncontroverted evidence starts at p.12 in the trial judges notes in the Record Book. The appellant said on more than one occasion that he had purchased Lot 287, paid $26.00 as down payment and paid rent of $2.00 per annum: See pp. 12 and 26. He also spent $205.00 building a fence: see p.29.

5. The trial judge was impressed by the appellant as a witness on p.2 of his judgment at paragraph [3]. He makes the following comments :

> *"There were only two witnesses. First was the plaintiff, now a 77 year old man. He has a good memory. As a witness he was sharp, knowledgeable and impressive. The other witness was Mr Swarath Singh a Senior Surveyor in the Lands Department at Lautoka. He also has a good memory. He is knowledgeable and impressive in respect of the history of the survey of the land in question. It is however in the submissions that the plaintiff's case at law becomes clear. I compliment counsel because what they filed is the foundation for this decision. Counsel for the plaintiff in particular has been very helpful in setting out the terms of the pleaded claim and of the agreed facts. Counsel for the first defendant conveniently set out the agreed issues and summarized his case. Counsel for the second defendant succinctly set out the argument of the second defendant which if accepted is also a defense for the first defendant. In brief, there was no agreement in writing for transfer of an interest in this land to this plaintiff, there is no note or memorandum signed by or on behalf of the second defendant so that the claim is unenforceable under Section 59 of the Indemnity Guarantee and Bailment Act, Cap 232)"the IGA Act"). The other substantial defence is raised under the Limitation Act, Cap 35."*

6. The trial judge analysed thoroughly the evidence before him including that of the appellant and some documents produced by him on pp.9-12 of his judgment. He also took account of the evidence of Mr. Swarath Singh who was the Senior Surveyor with the Lands Department: see at p.8 of the judgment.

7. His Lordship made the following findings of fact at p.12 of his judgment which is set out as follows:

> *(i) FSC (including its predecessor) has always owned the land in question. It invited employees to acquire some unproved interest in plots of FSC land. From the plans and evidence these plans were not farming acreages but were residential.*
> *(ii) The plaintiff's plot apparently was surveyed and identifiable by number.*
> *(iii) The plaintiff accepted FSC's offer, paid $26.00 to FSC for whatever the right, was given a receipt and went into occupation of Lot 287.*
> *(iv) The plaintiff paid rent installments of $2.00 per year to FSC for two years. I have no information to judge whether this "peppercorn" rental is significant. It seems a very small amount.*
> *(v) Thereafter, at the direction of FSC he paid his $2.00 per year to the Lands Department. He spent money on fencing, plants and maintenance.*
> *(vi) The Lands Department acknowledged the existence of what apparently is a surveyed lot number 287 of DP2768, and designated the plaintiff's occupation as tenancy at will, for its own purposes."*

8. The appellant had sued the Attorney General of Fiji representing the Director of Lands and FSC claiming freehold title or a registered lease, injunctions restraining the defendants from dealing with the property in any way or interfering with the plaintiffs possession and damages.

9. The trial judge, His Lordship, Finnigan J, dismissed the plaintiffs claim of title or lease, injunction and damages but gave him what he called an equitable remedy pursuant to the principle discussed in **Inwards v. Baker** [1965] 1 All ER 446. He ordered FSC to continue to give undisturbed possession of Lot 287 to the appellant until an agreement is reached for the appellant to vacate the land or until he vacated the land or until his death. So effectively the plaintiff was given a life estate which will end when he dies and the land would revert to the ownership of FSC.

11. It is against this decision of Finnigan J that the appellant has appealed to this court claiming that the trial judge had erred in refusing him a lease for 75 years and in dismissing his claims for title or registered lease, injunctions and damages.

12. A legal relationship such as landlord and tenant or vendor and purchaser cannot simply be such because the party's called their relationship a lease, or a sale and purchase agreement. It is for the court to decide the substance of the transaction.

13. Thus the following statement is made by Professor Butt in his book in **Land Law 5th Edition, at p.275 :**

> *"However, whether a transaction gives exclusive possession-and so whether it creates a lease –is a matter of substance, not form. The relationship between owner and occupant is determined by the legal effect of the parties' agreement, not by the label they choose to put on it. The question is not simply how the arrangement is presented in the documentation, but what is its true nature. A transaction that gives exclusive possession, and so is in substance a lease, cannot be converted into a licence merely by calling it one. Therefore, if it is established from the agreement that the parties intended to grant and accept what is in fact exclusive possession for a period at a rent, the interest created is a lease, regardless of how it is described. Where the language of licence contradicts the reality of lease, the reality prevails."*

14. See also the decisions in **AG Securities v. Vaughu** [1990] 1AC 417 and **Street v. Monford** [1985] AC 809. So, it is necessary for me to analyse and determine the true relationship between CSR and the, appellant when he took possession of Lot 287 in 1973.

15. At the outset, it can be said that just because the appellant, an illiterate labourer said that he paid rent of $2 per annum does not necessarily mean that he rented or leased Lot 287 from the FSC.

16. In my view, a preliminary point to be observed is that circumstances of this case show that it is most likely that as a matter of beneficial policy, CSR did decide to alienate some

of its non-productive land to its employees for housing. The appellant's evidence shows that his neighbours have acquired land from CSR and have built houses upon them.

17. In my view the relationship was that of vendor and purchaser arising from instalment sale and purchase contract.

18. This is supported by the following facts:

(i) The appellants uncontradicted evidence is that the notice on the board offered land to the workers of CSR after subdivision. The appellant purchased Lot 287 in 1973, paid $26.00 down payment and agreed to pay $2.00 per annum.

(ii) He was allowed by CSR to fence the property and spent $205.00 and the evidence of this can be found on p.29 of the judge's notes where he said – He purchased $200.00 of fence and $5 of posts from CSR.

If the land was leased from CSR, it is unlikely that it would have allowed the appellant to do any structural work such as fencing upon the property.

(iii) The relationship could not have been a lease because it failed to express the duration of the tenancy which is an essential requirement for a lease to be effective: See **Lace v. Chantler** [1944] KB 368.

19. These matters leave me in no doubt that the appellant bought Lot 287; he made a down payment of $26.00 and agreed to make installment payments of $2.00 per annum. The fact that he calls it lease and made rental payments does not mean that he had entered into a lease with CSR.

20. I am fortified in this conclusion by the fact that it was only the appellant who gave evidence of the CSR notice and then his purchase of Lot 287 when he paid $26.00 and paid of $2.00 annually. There was no evidence from the other parties of any of these

matters and the judge found the appellant to be an impressive witness with a good memory. These matters together with the facts found by the trial judge set out earlier confirm to me that the relationship between the appellant and CSR was that of an instalment purchaser and vendor.

21. I hold that if the sale and purchase agreement is seen as oral, it was nevertheless enforceable by the appellant under the doctrine of part performance : see **McBride v. Sandland** (1918) 25 CLR 69.

22. I am of the view that FSC should transfer title to the appellant of Lot 287. However, there should be proper accounts between the parties. Given the record of FSC in dealing with this matter, I think the best course to follow is to refer the matter to the Master to expeditiously deal with it and use this judgment as a guide to determine what the proper accounts are between the parties. If in the final result the Master is of the view the appellant has not fully paid for the land, then, the appellant would have two choices:

1. he would be entitled to pay whatever is left to' make full and final payment and FSC would be obliged to transfer title to him forthwith or

2. if still money are owing to the purchase price, the appellant could decide to continue paying $2.00 per annum until is paid off.

23. In view of the appellant's age, I recommend strongly that the matter be referred to the Master urgently and that the Master deal with the matter expeditiously and produce a

final result as to proper account between the parties. If the Master find that some money remains to be paid by the appellant, then he would have to pay it.

24. In my judgment the appeal should be allowed the orders of the trial judge should be set aside and an order should issue that FSC do transfer title to Lot 287 to the appellant in accordance with what I have said in paragraph 22. Further the matter should be referred to the Master for the taking of accounts. As to costs, in my opinion, the 1st Respondent should pay the appellants costs here and below assessed at $3000.

William Marshall, JA

25. I agree with the reasoning and the orders proposed by Izaz Khan JA.

Kankani Chitrasiri, JA

26. I also agree.

The Orders of the Court

Izaz Khan, JA

27. The Orders of the Courts are :

(1) the Orders in the Court below be set aside.

(2) the First Respondent do transfer title to Lot 287 to the Appellant if upon the Master taking accounts he finds that the purchase price was fully paid. If not, then the First Respondent is to transfer Lot 286 within 7 days of the appellant fully paying for it.

(3) the matter be transferred to the Master for the taking of accounts.

(4) the First Respondent do pay the Appellant's costs here and below assessed at $3000.

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Hon. Justice William Marshall
Justice of Appeal

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Hon. Justice Izaz Khan
Justice of Appeal

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Hon Justice Kankani T. Chitrasiri
Justice of Appeal