

Civil Jurisdiction

Civil Appeal No. 4 of 1969

Respondent
Dem
cd/L
File

Between:

RUANIARA

Appellant

ROBERT HAROLD GORDON

Respondent

Date of Hearing: 20th June, 1969.

Delivery of Judgment: 27th June, 1969.

No appearances for either party.

Gould, V.P.

JUDGMENT

This is an appeal from a judgment of the High Court of the Western Pacific sitting at Auki delivered by the Chief Justice of the Western Pacific on the 3rd December, 1968.

There were in fact cross actions which were heard together. Mr. R.H. Gordon (the plaintiff) claimed an injunction to restrain Ruaniara (the defendant) from planting coconuts, planting gardens, removing timber and living on the plaintiff's land situate at Kwa and Borasu on the Malaita island. The defendant claimed on behalf of himself and his line to be the owner of the lands in question.

When the case came on for hearing before the learned Chief Justice the parties appeared in person and at no time have they had legal representation. On the appeal to this Court both parties intimated that they did not wish to be represented and accordingly no argument in any form has been presented. In the Supreme Court the plaintiff gave evidence of the trespass he relied upon, and as to his title to the lands.

As to the Borasu land he relied upon a Government lease for 99 years from the 1st December, 1915, which had been assigned by the original lessee, the Malayta Company Ltd. to the Fairymead Sugar Co. Ltd. and then by the latter to the plaintiff. As to the Kwa land the plaintiff held a conveyance of the freehold from the Fairymead Sugar Co. Ltd. to himself dated the 10th September, 1958, which is also the date of his assignment of the Borasu lease from that Company. No conveyance of the Kwa land from the Malayta Company Ltd. to the Fairymead Sugar Co. Ltd. was produced. The plaintiff said in evidence that he knew that the Fairymead Sugar Co. Ltd. bought the land from the Malayta Company Ltd. and the learned Chief Justice found that prior to the occupation of the Kwa land by the Fairymead Sugar Co. Ltd. the land was occupied by the Malayta Company Ltd. on the following limited terms:-

It is manifest that the learned Chief Justice himself did a great deal of research in relation to the history of the two pieces of land. He found that the Crown Lease of the Borasu land was made under the Solomons Land Regulations 1914 as a lease of public land and that rent thereunder had been paid to the Government throughout its currency. As the Government had acted under statutory powers he found that it must be presumed (in the absence of evidence to the contrary) that the law was complied with and that the land was or had become public land and not subject to native ownership and customary rights. He found, therefore, that the defendant's claim to be the customary owner failed.

As to the Kwa land, the learned Chief Justice found that it had been the subject of an inquiry under powers conferred by regulation 3 of the Solomon and Gilbert and Ellice Islands (Commission of Enquiry) Regulations, 1914, and that recommendations in relation to it were made in 1922 to the Secretary of State for the Colonies. Under the Solomon Land Claims Regulations, 1923, these recommendations, if confirmed by the Secretary of State, were given legal effect, and by a Gazette Notification dated the 24th June, 1926, it was notified that the Secretary of State had confirmed the recommendations in relation to Kwa. The effect appears to have been that the Malayta Company Ltd. were confirmed in their occupation but were to pay a total of £130 compensation. Under the regulations default would render the Malayta Company Ltd. subject to penalties and to cancellation of its right of occupation. The learned Chief Justice held that (unless the contrary is established) what ought by law to have been

done must be presumed to have been done, and that there was no shadow of evidence that the compensation was not paid according to the terms of the recommendations. The claim by the defendant to be the customary owner of the Kwa land was, therefore, also dismissed.

We consider that, in the circumstances, the learned Chief Justice was entitled to apply the maxim omnia praesumuntur rite et solenniter esse acta donec probetur in contrarium; the grounds of appeal to this Court signed by the defendant in person do not raise any new matter and the appeal, so far as it relates to the defendant's claim, is dismissed.

The learned Chief Justice granted the plaintiff's claim for an injunction in the following limited terms:-

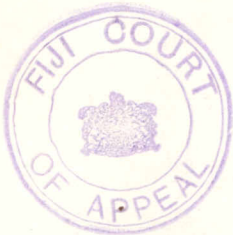
"..... an injunction will therefore issue against the Defendant in the usual form to restrain him from planting further coconuts or making further gardens or removing further timber from the Plaintiff's land, but I will not issue an injunction to restrain the Defendant from living on the land, or require him to vacate any garden which he has already in cultivation or any patch of coconuts which he has already planted, for that would be tantamount to an eviction order; and an application for eviction might well raise other issues which are not in issue in this present case. In other words the Defendant may continue to cultivate any gardens or coconuts which he has already planted and he may continue to live where he is now living, unless or until he is ordered by the Plaintiff to vacate the land. If he then fails or refuses to vacate the land, the Plaintiff will be at liberty to test the matter in other proceedings than these. But in the meantime the Defendant must not extend those gardens or plant any more coconut trees or take any more timber from the land until further order."

So far as the Borasu land is concerned the plaintiff appears to have shown a clear leasehold title upon which to base his claim. The position as regards Kwa is not quite so straight forward. The regulations and documents referred to by the learned Chief Justice indicate that the Malayta Company Ltd., in the 1920's, acquired or were confirmed in a right of occupation. Whether this amounted to or became an assignable freehold title is not apparent from the material before this Court. While the conveyance dated the 10th September, 1958, from Fairymead Sugar Co. Ltd. to the plaintiff bears an endorsement indicating that it was registered in a register kept by the Commissioner of Lands and Surveys, the absence of a conveyance from the Malayta Company Ltd. to the

Fairymead Sugar Co. Ltd. does not appear to have been commented on. On consideration we think that this matter is not material, as the injunction affects only lands in the possession of the plaintiff and does not touch those in the occupation of the defendant. The plaintiff's actual possession is good as against all except those who can show a better right to possession in themselves - Perry v. Clissold (1907) A.C. 73, 79; Halsbury's Laws of England (3rd Edn.) Vol. 38 p.744. This the defendant failed to do, and in relation to the Kwa land the injunction can be properly based on this ground.

The appeal in relation to the injunction is, therefore, also dismissed. There will be no order for costs of the appeal.

(SGD) T. J. GOULD
VICE PRESIDENT.

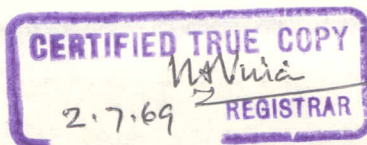


(SGD) J. D. HUTCHISON
JUDGE OF APPEAL.

(SGD) C. C. MARSACK
JUDGE OF APPEAL.

SUVA,

27th June, 1969.



FIJI COURT
OF APPEAL