

ME FOLAU v. TEVITA FOLAU.

This is an appeal from a decision of the Supreme Court (Hunter J.). In the Supreme Court the Appellant who was the wife of the Respondent claimed certain leasehold property in Nuku'alofa plus £800 damages from her husband. The claim was dismissed and the plaintiff appealed.

The Privy Council (Hammett C.J.) set aside the judgment of the Supreme Court and on the 5th October, 1960 delivered the following judgment :

This is an appeal from the decision of the Supreme Court dated 3rd February, 1959 whereby the Plaintiff-Appellant's claim for certain leasehold property in Nuku'alofa with the buildings erected thereon, and £800 damages against her former husband was dismissed.

The judgment of the Supreme Court in the record is not very clear. The learned trial Judge has minuted it to the effect that he doubts the accuracy of the Court Reporter's record and adds, "It is impossible for me now to remember exactly what I did say but I feel quite certain the above is not accurate". It appears that it is not the actual decision of which the Judge doubts the accuracy of the record but the reasons for that decision.

Whilst appreciating the difficulties of the Judge we would like him in future to make a sufficient note himself of the reasons for his decision to ensure it is made clear to us why it is that he reaches the conclusions he does reach. The risk of the errors in the Court Reporter's record vitiating the whole trial will thus be avoided.

Fortunately many of the facts in the case are not seriously in dispute and so we do not feel it necessary to send the case back for retrial.

The parties were husband and wife. In about 1943 they agreed to put in separate tenders for the purchase of the leasehold property in dispute. At that time there were buildings on the land but they have since been added to. The tender of the wife — the Appellant — was accepted but of the purchase price of £355 only £55 was put up by the Appellant and the balance of £300 was contributed by the Respondent.

Later the parties wished to raise a loan on the security of the property to provide money for the education overseas of one of their children. For reasons, which are not clear to us, for this purpose the property was transferred to the name of the husband who raised the loan. This money was spent as agreed and has since been repaid but the property has still remained in the name of the husband.

Unhappy domestic differences arose between the parties, who are now divorced and the wife has now claimed the return to her of the property which was originally purchased by her in her own name with funds provided by them jointly.

It would appear from the judgment that the learned Judge was of the opinion that this was joint property i.e. when it was in the name of the wife she held it on behalf of them both and when it was later transferred to the name of the husband he likewise held it as trustee for them both. On the facts we have no hesitation in agreeing with this conclusion reached by the Court below.

We are therefore unable to understand why it was that in the final outcome the claim was dismissed — which in effect means that the property was held to belong solely to the husband.

In our view the beneficial interest in this property was owned jointly by the Appellant and the Respondent, in proportion to the amounts contributed by each of them towards the original purchase price which for practical purposes we are satisfied were "The appellant one seventh" and "The Respondent six sevenths".

In these circumstances the judgment of the Court below is set aside. We declare that the Defendant-Respondent holds the property in dispute on trust for himself and the Appellant on a six to one share basis.

Now that the rights of the parties have been finally ascertained we have no doubt that, with the aid of their lawyers, they will be able to arrive at a fair basis for settling a division of the property. We do however reserve them liberty to apply to the Court for further directions in case they are unable to settle the matter. In that event we feel we should make it quite clear that we may consider it necessary to order that the whole property be sold and that the proceeds of sale be distributed to the parties in the proportions we have indicated. Since the Appellant has succeeded in her appeal in part only we shall assess the cost of the Appellant in this Court and the Court below at £35/0/0.