

Teta Co Ltd v Finau, Finau and Minister of Lands

Privy Council
App 3/1975

30 April 1979

Land - registration - ability of registered holder to transfer good title to land regardless of trusts

10 *Registration of land - ability of registered holder of land to transfer good title regardless of trusts*

Probate and administration - effect of deed of settlement upon administration of estate

Viliami Finau was the holder of a lease at the time he died intestate on 4/11/56 leaving one brother, Kisina Finau, and one sister, Tupou Finau. Letters of administration were granted to the brother in 13/11/56 and on 15/1/57 a transfer of the lease to the brother was registered under the Land Act.

20 In 1969 the sister Tupou Finau died leaving a will under which her son Sitini Finau was the sole beneficiary. In 1971 Kisina Finau died leaving a will, but letters of administration were granted to one of his daughters, Amelia Finau, with the consent of his other children. On 13 February 1972 Amelia was registered as the holder of the lease, which had previously been renewed, and in 1973 she sold it to Teta Co Ltd and the transfer was registered. Amelia did not account to the estate of Tupou Finau for any of the proceeds from the sale and Sitini Finau brought proceedings in the Land Court.

30 The Land Court held that the brother and sister of Viliami Finau were entitled to succeed to a half interest each in the lease when Viliami died intestate, and that Sitini Finau was entitled to succeed to his mother's interest in the lease, and this right could not be defeated by the transfer of the lease to Amelia Finau and then later to Teta Co Ltd. The Company appealed to the Privy Council.

HELD:

Reversing the decision of the Land Court:

- 40 (1) Upon the death of the intestate, when the brother Kisina Finau took out letters of administration, property in the lease vested in him, but subject to statutory trusts in favour of himself and Tupou Finau;
- (2) By virtue of a deed of settlement made on 22/6/1957 between Kisina Finau and

Tupou Finau the leasehold was agreed to be held in trust by Kisina Finau for himself and Tupou Finau as tenants in common in equal shares, and were no longer assets administered under the letters of administration;

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- (3) The holder of the leasehold, and after his death Amelia Finau was also properly registered as holder of the leasehold, although she held it in trust for the estates of Kisina Finau and Tupou Finau;
- (4) As registered holder of the leasehold Amelia Finau could transfer the legal title of the whole lease to the company, provided the company had acted bona fide, without notice of the trusts under the deed of settlement and for valuable consideration;
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- (5) Since the Land Court had not considered whether the company had acted bona fide, without notice of the trusts and for valuable consideration, the case was remitted back to the Land Court to determine these questions.

Statutes considered

Land Act ss103-116

Probate and Administration Act s16

Cases considered

Assets Co Ltd v Mere Roihi (1905) AC 176

Frazer v Walker (1967) 1 AC 569

70 Pilcher v Rawkins (1872) 7 Ch App 259

Privy Council

Judgment (Appeal No.3/75)

This appeal and appeal No.4/1975 both arise from actions brought by First Respondent in which he claimed in Action No.25/74 a one-half share in a lease registered as No.2318A, and in Action No.35/74 damages if he was unsuccessful in obtaining such interest. The history of lease No.2318A commences with a lease granted by the Minister of Lands to one Davidson for a period of 21 years. This lease was renewed for a further
80 period of 21 years expiring on December 5th, 1960, which renewal lease was registered as No.1735. Davidson transferred the lease to Viliami Finau by registered transfer No.T.1735B. Viliami Finau died intestate on November 14th 1956. By virtue of Section 16 of the Probate and Administration Act (Cap.17), his successors were his brother and sister, Kisina Finau (m) and Tupou Finau (f). On November 13th 1956 Letters of Administration were granted to Kisina Finau. On January 15th 1957, the said leasehold interest was by registered Transfer No.1735C, transferred into the name of Kisina Finau.

On June 22nd 1957, Kisina Finau and Tupou Finau entered into a Deed of Settlement
90 in respect of the assets in the estate of Viliami Finau. This Deed will be examined in greater detail later. It is sufficient for the moment to say that there were, amongst such assets, three leasehold properties including the one now in question. In 1960 the terms of all three lease holds expired. There was a verbal agreement between Kisina Finau and Tupou Finau that separate applications should be made for renewals. Such applications were made to the Minister of Lands. Two of the allotments were included in a new lease to a close relative. Nothing appears to have happened in respect of lease No.1735 until 1966 although possession continued as before. In 1966 a new lease for 21 years back-dated to 1960, was granted to Kisina Finau, and, on March 2nd, 1966, Kisina was
100 registered as the lessee under No.2318A.

In 1969 Tupou Finau died leaving a will under which her executors were Ronald Vea and Fine Halapua. Probate of the will was granted to the executors on May 3rd, 1970. On August 29th, 1971, Kisina Finau died. He left a will under which the executor was one Lunati Finau who took out probate. The record is not clear but it seems this grant was superseded by Letters of Administration granted by consent to Amelia Finau, daughter of Kisina Finau. Amelia Finau is Second Respondent.

On February 13th, under Cabinet approval No.97, lease No.2318A was transferred
110 to Amelia Finau who thereupon became the registered holder. Amelia Finau sold lease No.2318A to Appellant for the sum of \$10,000. By Cabinet approval No.967 dated August 6th, 1973, lease No.2318A was transferred to Appellant who thereupon became the registered holder. Amelia Finau now has none of the money nor has she accounted to the executors of the estate of Tupou Finau in respect of any portion thereof

First Respondent is the sole beneficiary under the will of Tupou Finau. He has brought the present action without joining the executors. It appears that First Respondent claimed that the sale to Appellant was unlawful or illegal and that it ought to be set aside
120 and that he be restored as the owner of a one-half interest in lease No.2318A in the place of his mother Tupou Finau. The Chief Justice held that the sale of lease No.2318A was illegal because it deprived First Respondent of the undivided half-share he was entitled

to as the sole beneficiary of his mother, Tupou Finau.

The following judgment was given by the Chief Justice:-

130 "For the reason stated this Court enters judgment for the plaintiff Sitini Nofomuli Finau and orders cancellation of the transfer of the Lease as 2318A to Teta Limited and further orders that the said lease be registered in the name of the plaintiff Sitini Nofomuli Finau and an executor of the will of Kisina Finau to be appointed by this Court on application, holders of a half-share each as tenants in common".

This Chief Justice also outlined the procedure which Appellant must follow if it wished to retain the lease.

140 The reason stated by the Chief Justice are summarised in the following passages:-

"When 'Amelia Finau', the first defendant took it upon herself to act as executor and was so appointed by consent of the other beneficiaries of the will of Kisina and subsequently had the lease transferred to her name she could hold it only subject to the statutory right of Tupou Finau.

150 When, however, this lease was sold to and transferred to Teta Limited as an undivided lease the sale and transfer were illegal as by this transaction the plaintiff Sitini Nofomuli Finau was deprived of the statutory right of Tupou which by will he has acquired."

The Chief Justice also rejected a claim that the action was statute-barred by reason of Section 148 of the Land Act. He said:-

160 "It was from the date of transfer to Teta Limited namely, 6/8/73, that time under S.148 would begin to run because it was only then that the plaintiffs suffered alienation and adverse possession and only then that his right of action began".

170 The Chief Justice appears to have put undue weight on what he called a statutory right. He also treated a failure to carry out the "statutory right" as a basis for the application of the law relating to illegal contracts. It is not easy to follow his reasoning on this topic. The law concerning illegal contracts does not apply. The questions involved fall for determination under the law of trusts and the effect of registration under the Land Act.

There is also the question of the effect of Section 148.

180 It is nothing to the point to call the right of succession under Section 16 of the Probate and Administration Act (Cap.17) a statutory right. It is a mere right of succession on intestacy settled by statute so that the administrator holds the estate on statutory trusts. The right of a beneficiary under a statutory trust is no different from the right of a beneficiary under a will. The same principles of law apply. This disposes of all arguments based on the so-called statutory right.

In his will, which Amelia Finau (Second Respondent) was bound to administer under her Letters of Administration, Kisina Finau provided as follows:-

190 "If I die and my daughter Amelia Finau shall control and manage all my properties and my half-share that I have with Tupou Finau. If the shares of Tupou Finau have been fully paid she will continue to manage my undertakings and if profitable she shall pay by instalments share by way of cash or properties to the remainder of my children who are Solomone Finau, Samiuela Finau, 'Ema Finau, Vika Finau and the little daughter of Viliami Finau one Lasale Finau and that they should be given 1,000 pounds each and 200 pounds to my son Lasale Finau."

200 It is now convenient to examine the deed of June 22nd, 1957, made between Kisina Finau and Tupou Finau. It was conceded that this document was legal and was binding on the parties. It recited (inter alia) that the estate of Viliami Finau could not, according to law, be completed for the time being. The following further recitals appear, namely:-

210 "(iv) part of the Assests of the said estate comprise a general store (including furniture, fittings, stock-in-trade and other goods, chattels and things) and a picture-show together with the business of selling ice-cream together with the furniture, fittings, goods, chattels, and things,

(vi) it is desired that the general store shall become the property of the said Kisina Finau the business of the picture-show proprietor shall become the property of the said Tupou Finau, and that adjustment to meet the difference in value of the two business should be made."

220 The deed then provided for a division of assets and for certain liabilities to be taken over by each. The three leaseholds were dealt with thus:-

" 6. Leaseholds half-share as tenants in common 175 pounds".

The deed stated that it was the desire of the parties to effect a tentative settlement mainly for the purpose of allowing the separate business undertakings to be carried on. There is no evidence of any further settlement except that, by consent, the renewals of two of the leaseholds were in favour of someone other than the two beneficiaries as earlier stated, so, although the deed was stated to be a tentative settlement it was, until superseded, fully effective and operative in its terms.

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The legal effect of the grant of administration and the powers conferred on the administrator now require consideration. An administrator derives title to the estate from the grant of Letters of Administration. The property of the deceased vests in the administrator. So, when Kisina Finau took out Letters of Administration of the estate of Viliami Finau deceased, the assets of the estate vested in Kisina Finau who held them on the trusts declared by Section 16 of the Probate and Administration Act (Cap. 14) which meant, subject to payment of debts and administration expenses, on behalf of himself and Tupou Finau. Section 16 provides for certain specific property being inherited by a widow, but, other than this the estate is held on trust for the persons named in the schedule. Kisina Finau left no widow, so his children became entitled to his estate in equal shares. There is in such case no question of any property being specifically devised. Kisina Finau, as administrator, was entitled to be registered as the holder of the legal estate under lease No. 1735, but he held in terms of the statutory trust in favour of himself and Tupou Finau. Debts must be paid and no beneficiary has an immediate right to any specific asset. The property in any asset is an inchoate right and to make it perfect the administrator must assent before it passes from the general assets of the estate to the particular beneficiary or beneficiaries as his (her) or their property: Halsbury's Laws of England, 3rd Ed., Vol. 16, p.338 para.657.

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The importance of the deed is that Kisina Finau has assented to the assets of Viliami Finau passing from the estate and, according to the deed, becoming the property of himself or of Tupou Finau, or, in the case of the leaseholds as to both as tenants in common in equal shares. Thereafter the assets of the estate comprised in the deed were fully administered by assent of the administrator and acceptance by himself and Tupou Finau. Some of the assets were thus distributed and became the sole property of one or the other according to the deed, but the leasehold interest were still to be held in trust by Kisina Finau for himself and Tupou Finau as tenants in common in equal shares. Although the earlier shares were not altered, the three leaseholds were now held under the trust created by the deed and were no longer assets being administered under the Letters of Administration. By reason of this, when Kisina Finau died, the leasehold interests were property held by him as to the legal estate but in trust for himself and Tupou Finau by virtue of the deed and not by virtue of the former statutory trust. The mere accident that they were still in equal shares is unimportant since, at the time when the deed was signed, any different division could, by agreement, have been made. The importance of this is that the trust fell to be administered by the representative of the estate of Kisina Finau. If this were not so it would have been necessary to take out administration de bonis non in respect of the estate of Viliami Finau to deal with property not fully administered.

Kisina Finau was correct in law when he gave the direction in his will, earlier set out,

in respect of "the half-share that I have with Tupou Finau". There is no doubt but that Tupou Finau was entitled to a half-share but the question is a wider one because Amelia Finau had, as administratrix, registered herself as the holder of lease No.2318A. She was entitled to do this, in fact. Section 110, as will be seen later, made such registration compulsory. However, Amelia Finau sold lease No.2318A to Appellant, and Appellant was duly registered as the holder of lease No.2318A. The question is whether or not
 280 Appellant got a good title to lease No.2318A.

The Land Act provides a scheme for registration of titles. Divisions I and II deal with hereditary Estates and registration of allotments. Division III, which is pertinent, deals with Registration of Leasehold Title and Section 103, with an exception which is unimportant, enacts that no lease, sub-lease, transfer or permit, until registered, shall be effectual to pass or affect any interest in land. Thus on registration a lease is effectual in creating a leasehold interest, or term of years, in the land leased. Section 106 provides
 290 for the method of registration. One original copy is endorsed by the Minister with a memorial of registration and filed in the register of leases and the other copy is also similarly endorsed and delivered by the Minister to the person entitled. By Sections 107 and 108 provision is made for the registration of transfers and sub-leases. A similar process is provided for the presentation of documents, entries and endorsement of memorials of the transaction and a return of documents to the transferred.

Section 110 enacts that certain documents affecting leaseholds must be registered. The Section says that registration "shall be compulsory". It is sufficient to cite two classes of documents, namely:-

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- (b) grants of Letters of Administration; and
- (c) grants of probate;

The method of registration is provided for by Section III which reads:-

"III. The registration of any document required by section one hundred and ten to be registered shall be effected as follows:-

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- (a) such document together with a true copy thereof shall be delivered to the Minister together with the original lease or transfer or (where the interest affected thereby is that of a sub-lessee) the sub-lease of any land affected by such document;
- (b) the Minister shall file in his office the true copy of the document to be registered by binding up the same in a book (to be called the register of documents affecting leaseholds) and shall endorse the original with the following

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memorial of registration:

Registered the day of 19.....

Register of Documents Affecting Leaseholds:

Book: Folio:

330Signature of Minister

(c) the Minister shall also endorse the original lease or transfer or the sub-lease (as the case may be) together with the duplicate of the same on file in his office with a memorial of registration in accordance with such one of the forms set out in Schedule IX as the nature of the case requires;

340 (d) the original lease or transfer or the sub-lease (as the case may be) endorsed as provided in paragraph (c) together with the original of the document to be registered endorsed with the memorial of registration shall be delivered by the Minister to the person entitled thereto."

350 Sections 112, 113 and 114 provide for fees payable, priority of registration (if two or more in documents have been executed) and for the Register to be open to search and inspection. Section 115 requires the Minister to keep proper nominal and land indices alphabetically arranged in respect of each book of registers.

Division IV deals with caveats generally and in particular Section 116 provides rules governing caveats. It is sufficient to cite sub-section (1):-

360 "116.(1) Any person claiming to be interested under any will, settlement or trust deed or any instrument of transfer or transmission or under any unregistered instrument or otherwise however in any leasehold land may lodge a caveat with the Minister to the effect that no disposition of such leasehold land be made either absolutely or in such manner and to such extent only as in such caveat may be expressed or until notice shall have been served on the caveator or unless the instrument of disposition be expressed to be subject to the claim of the caveat or to any conditions conformable to law expressed therein.

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Under the scheme of registration provided by the Land Act, Kisina Finau was compelled by Section 110(b) to register the Letters of Administration granted to him in respect of the estate of Viliami Finau. By reason of such registration he was the person entitled to a new lease which was granted on March 2nd, 1966, and registered as No.2138A. Moreover, the application for a new lease was by consent of Tupou Finau. If she wished to protect her half-share she was able to do so by lodging a caveat. When Kisina Finau died and Letters of Administration were granted to Amelia Finau, she was likewise compelled to register such Letters of Administration. Although Amelia Finau was bound by the trust as to the half-share of Tupou Finau, this interest could not be registered unless Tupou Finau called for a transfer. Nor could it appear in the register unless she lodged a caveat which was purely a matter for her to decide. Unless she lodged a caveat there was no duty on the Minister of Lands to enquire into or be concerned with anyone other than those persons appearing on the register. This disposes of any question of liability on the part of the Minister who acted throughout in strict accordance with his duties under the statute.

The crucial question is whether Amelia Finau, having become properly registered as the person entitled to lease No.2318A, could pass a good title to Appellant. Upon grant of administration lease No.2318A was vested as to the legal estate in Amelia Finau. This was by operation of law: Halsbury's Laws of England, 3rd Ed., Vol.16, para.551 p.288. By registering the Letters of Administration, as she was bound to do, she became the holder of the legal estate in lease No.2318A. Although beneficially she held it in trust for the estate of Kisina Finau and Tupou Finau. As administratrix of the estate of Kisina Finau she could dispose of his half-share but under the trust deed there was no power of sale of the half-share of Tupou Finau, so Amelia Finau had no express power to sell that half-share. The question is, however, could she, by virtue of registration, properly obtained in accordance with the provisions of the Land Act, pass on a good title to Appellant?

Counsel for Appellant relied heavily on the cases of Assets Co.Ltd. v. Mere Roihi [1905] A.C. 176, and Frazer v. Walker [1967] 1 A.C. 569. These cases depend upon special legislation in New Zealand which contains provisions not appearing in the Land Act. However, they are of some guidance on the question of the intention of legislation which provides for a system of registration. The Land Act sets up a system of registration which provides for compulsory registration of certain documents of title together with provision for registers which are open to public inspection. We are not concerned in this appeal with any question of fraudulent dealing which results in registration but with persons who lawfully appear on the register as holders of lease No. 2318A, and the absence of any notice by means of a caveat that any trust existed in respect of such lease. In our opinion the intention of the Legislature in passing Part VII of the Land Act was to enact a system of compulsory registration so that, upon search of the registers, anyone dealing with the interest, had a record of the legal ownership of that interest. In so far as trusts were concerned, if the beneficiaries desired protection, this could be attained only by the lodging of a caveat. Except to that extent there is no provision for registration of any such beneficial interest. In short, the intention of the Legislature in providing for compulsory registration was to create a record of the legal ownership of the interest registered, free

from any trusts or other claims except those protected by a caveat duly lodged under Section 116. Accordingly any person dealing with the registered owner bona fide and for value without notice of any trust would acquire a good title. The principles laid down in Pilcher v Rawlins (1872) 7 Ch. App. 259, apply.

430 In the result we hold that Kisina Finau and Amelia Finau were properly registered as respective holders of the legal estate of the interests registered in their names and that when the transfer to Appellant took place, Appellant was entitled to treat Amelia Finau as the holder of the legal estate in lease No 2318A and was not bound to enquire into the terms upon which Kisina Finau or Amelia Finau held such interest under their respective grants of administration. The only question to be determined was whether or not Appellant acted bona fide and for valuable consideration without notice of any trust when it dealt with Amelia Finau as the registered holder of Lease No.2138A. This question, we understand from counsel, was not dealt with by the Chief Justice who took the view that it was irrelevant. It must be determined. We are not concerned with the rights of the
440 executors of the estate of Tupou Finau against Amelia Finau. That question can be determined when it arises.

In our view Section 148 does not apply. Kisina Finau and Amelia Finau were both entitled to be registered as the respective holders of the legal estate in lease No.2318A. Had it been otherwise it would have been necessary to consider Section 148. However, Section 148 would not prevent the executors of Tupou Finau from enforcing the trusts upon which lease No.2318A was held. It was only the intervention of the dealing with Appellant which, if it was bona fide and for value without notice, would prevent any relief
450 in respect of the leasehold interest itself.

The appeal will therefore be allowed and the judgment in the Land Court set aside. The case is remitted to the Land Court to determine the above question and then to give such judgment as may be proper in accordance with this judgment. No costs are allowed.
Judgment (Appeal No.4/75)

We have held in Appeal No.3 of 1975 that Appellant acted properly and in accordance with the duties and powers conferred on him by Part VII of the Land Act (Cap.63). This disposes of all matters raised in respect of the actions of the Minister. One
460 further question, however, requires some comment. First Respondent brought the action without joining the executors of the estate of Tupou Finau. Unless the executors had assented to his becoming the owner of the said leasehold interest (and there is no proof of this) it was still vested in them and they alone could enforce the trust or, if they refused, then an appropriate remedy would lie at the instance of First Respondent. In view of the result, no good purpose can now be served by pursuing this topic further. The allowing of this appeal is without prejudice to any right of action either the executors of Tupou Finau or Sitini Nofomuli Finau may have against Amelia Finau. The appeal is allowed and Case No.35/74 is remitted to the Land Court for judgment to be entered for the Defendants in that case. No costs are allowed.