

3 OCT 1956

Appeal No. 48 of 1946.

**In the Privy Council.**

**ON APPEAL**  
*FROM THE SUPREME COURT OF FIJI.*

BETWEEN

YENKANNA (father's name PULLAIYER)

*Defendant-Appellant,*

AND

ACHANNA (father's name NAKA NAIDU) - - -

*Plaintiff-Respondent.*

10

**CASE FOR THE RESPONDENT.**

1. This is an appeal against a judgment and decree of the Supreme Court of Fiji dated the 22nd October, 1945.

RECORD.

2. The question for determination in this appeal is whether a transfer dated the 18th December, 1941, of a piece of land in Nadroga, Fiji, having an area of 431 acres 2 roods and 38 perches (the registered number of which was 6656), which was made by the Respondent in favour of the Appellant, was made by way of sale to the Appellant or was made for the purpose of security only.

p. 21.

20 3. The history of this litigation is as follows:—

4. In the year 1933 the Respondent bought from a Mr. Mackie a piece of land having an area of about 456 acres in the District of Nadroga, Fiji, for the sum of £700 and mortgaged it to Vatu Investments Ltd. He later sold 25 acres and was left with 431a. 2r. 38p. The registered number of the Mortgage was 21195.

p. 6, l. 2.

5. The Plaintiff was in difficulty in respect of keeping up his payments under the Mortgage deed and asked help from the Appellant who lived some sixty miles away and with whom the Respondent's daughter was then living.

30 6. As a result of the visit of the Appellant to the Respondent the Appellant signed the said transfer of the said land dated the 18th December, 1941. The consideration was in the transfer stated to be one shilling and it was declared that the value of the land did not exceed £1,500.

p. 21, l. 6.  
l. 8.  
l. 28.

7. The Respondent's version of the arrangement made in respect of the transfer was that the Appellant promised that he would pay off the

p. 9, l. 28.  
and l. 35.

CASE FOR RESPONDENT

RECORD. — moneys owing on the Mortgage and when that had been done and the money repaid to the Appellant, the Appellant would re-transfer the property to the Respondent.

p. 13, l. 38. 8. The Appellant's version on the other hand was that the Respondent asked the Appellant for a loan, which the Appellant refused, and that it was agreed that the Appellant should buy the property from the Respondent for the amount owing on the Mortgage.

p. 12, l. 14 9. After this transfer the Respondent remained in possession of a house which was on the land and of all the land which was unlet. According to the Respondent's evidence 120 acres were then let. 10

10. On the 21st June, 1943, a sale was negotiated of the land on one side of a road having an area of about 267a. 1r. 04p. (according to the plan) with the Roman Catholic Mission for the sum of £1,000. The net proceeds of this sale were more than sufficient to pay off the moneys owing on the mortgage 21195 which was duly discharged.

p. 11, l. 12. 11. This agreement for sale was originally prepared by solicitors on the joint instructions of the Respondent and Father Claudius of the Mission and was sent to the Appellant's solicitors for approval. Both the Appellant and the Respondent claimed to have negotiated the sale.

p. 10, l. 8. 12. The Respondent then asked the Appellant to pay him the balance 20 of the purchase money and retransfer the part of the land which was unsold but the Appellant refused to do so. On the 25th June, 1944, the dispute was referred to the arbitration of men of the caste. No settlement resulted from the meeting of the panchayat.

p. 30. 13. On the 6th September, 1944, the Respondent instituted against the Appellant

#### THE PRESENT SUIT

claiming the land remaining unsold namely 164a. 1r. 34p. then comprised in Certificate of Title 6828 and for payment of the balance of the net proceeds of sale namely £500 4s. 11d. 30

14. A Statement of Claim a Defence and Counterclaim and a Reply and Defence to Counterclaim were delivered in the action, which came on for trial on the 19th September, 1945, before Chief Justice Seton.

15. The learned judge heard the evidence of the Appellant and the Respondent and other oral evidence and considered documentary evidence.

16. The learned Judge said in his judgment:—

“ I have come to the conclusion that the Plaintiff's account of the transaction between him and the Defendant is the true account

and the Defendant's version should be rejected for the following reasons:— RECORD.

10       “(A) The Plaintiff went to the Defendant for assistance but, according to the Defendant's account, he got nothing except that he parted with the only asset of value he had in return for the Defendant's undertaking responsibility for the repayment of the mortgage; it has been suggested that he thereby protected his other assets, *i.e.*, his cultivation and his goats, but as these appear to have been already included in a bill of sale, they remained in jeopardy. The transaction as represented by the Defendant seems to me an improbable one.

20       “(B) The Defendant says that at that time the land was not worth more than the amount due on the mortgage, say £500 to £600. Why then was there a certificate on the transfer (for purposes of stamp duty) that the value of the land did not exceed £1,500? The Defendant says that he knows nothing about such a certificate but both parties sent to Mr. Stuart to prepare the transfer. Either Mr. Stuart knew the value (as he might have done, being also the solicitor for the mortgagees) or he asked the question of the parties and was told what to put. Moreover, a portion of the land was sold for £1,000 not much more than a year after the transfer and, according to the Defendant, the land which remained after the sale is the more valuable. Judging from the slender evidence on the subject before me, I should say that at £1,500 the land was not over-valued.

      “(C) The Plaintiff continued in occupation of the property and no attempt was made to terminate his occupation until after the panchayat, *i.e.*, three years or more after the alleged sale.

      “(D) On the evidence, I believe that it was the Plaintiff who negotiated the sale to the Mission, and I disbelieve the Defendant when he says that it was he who did so.

30       “(E) As a witness the Plaintiff struck me as being honest, albeit somewhat stupid, while the Defendant I thought untruthful.”

17. The learned Judge accordingly declared that the Defendant held the land in question in trust for the Plaintiff and made an order directing that

- (a) an account be taken of the moneys received and disbursed by the Defendant as such trustee as aforesaid;
- (b) the balance due upon such account be paid by the Defendant to the Plaintiff or by the Plaintiff to the Defendant as the case might be;
- 40       (c) the Defendant do execute in favour of the Plaintiff a transfer of the land comprised in certificate of title No. 6828

and he ordered the Defendant to pay the costs of the proceedings.

RECORD. 18. The Appellant obtained on the 20th November, 1945, leave to appeal to His Majesty in Council and it is submitted his appeal ought to be dismissed with costs for among other the following

REASONS:—

1. The question at issue was one of fact and depended on whether the Respondent or the Appellant was to be believed. The learned Chief Justice who heard the evidence believed the Respondent.
2. The facts as to the value of the land and the fact that the Respondent continued in occupation of the unlet land 10 corroborate the Respondent's story and are not reconcilable with the Appellant's story.
3. The Judge's conclusion that the evidence showed that the Respondent negotiated the sale was correct
4. The judgment of the learned Chief Justice was right and ought to be affirmed.

LINDSAY M. JOPLING.

BARROW, ROGERS & NEVILL,  
Whitehall House,  
41, Whitehall, S.W.1,  
*Solicitors for the Respondent.*

**In the Privy Council.**

---

**ON APPEAL**

*FROM THE SUPREME COURT OF FIJI.*

---

BETWEEN

YENKANNA - - *Defendant-  
Appellant,*

AND

ACHANNA - - *Plaintiff-  
Respondent.*

---

**CASE FOR THE RESPONDENT.**

---

BARROW, ROGERS & NEVILL,  
*Whitehall House,*  
41, *Whitehall, S.W.1,*  
*Solicitors for the Respondent.*