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34,1956

No. 49 of 1954.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF HONG KONG APPELLATE JURISDICTION.

UNIVERSITY OF LONDON
W.C.1
20 FEB 1957
SCHOOL OF DISTANCE
LEGAL STUDIES

BETWEEN

CHU YAM OM and CHEUNG LAN CHAU (1st and
3rd Defendants) *Appellants*

46066

AND

10 LI TAM TOI HING *Respondent.*

Case for the Respondent.

RECORD.

1. This appeal is from a Judgment of the Supreme Court of Hong Kong, Appellate Jurisdiction (the Full Court), dated the 30th June, 1954, dismissing an appeal from a Judgment of the Supreme Court of Hong Kong, Original Jurisdiction, dated the 5th March, 1954, whereby it was adjudged that the Respondent should have relief in respect of a property known as No. 1, Oaklands Path, Hong Kong, as follows:—

20 (1) That the Appellants should execute an assignment to the Respondent of the said property and do all other things necessary to vest in her the legal estate.

(2) That the Appellants should discharge two mortgages on the property in accordance with the Debtor and Creditor (Occupation Period) Ordinance, 1948.

(3) That in default of such discharge of the mortgages as aforesaid the Respondent to have leave to discharge the same with liberty to recover from the Appellants the amounts paid, together with the costs and other incidental expenses.

30 (4) That in default of execution of an assignment as aforesaid the Registrar of the Supreme Court should execute such assignment and do all other things necessary to vest in the Respondent the legal estate.

(5) Possession, but with a stay of execution.

(6) Mesne profits, the amount to be agreed or found by the Registrar.

(7) Costs.

p. 16, ll. 47-48.
p. 50, l. 16.
pp. 212-214.

2. The principal issue to be determined on this appeal is whether the said property, which the Respondent purchased from the Appellants and the second Defendant (one Leung Sai Foon, now deceased) (hereinafter referred to together as "the Defendants") on the 17th February, 1944, is subject to a resulting trust so as to defeat the Respondent's title, notwithstanding a written declaration of trust by the Defendants dated the 12th December, 1932, which is inoperative against the Respondent because not registered.

p. 65, l. 19.
p. 48, l. 36.

3. The first Appellant is a school master and the second Appellant the Headmaster of Sih Nan School which is carried on at the said property. 10
The second Defendant was also a school master of the said School. (The said School is hereinafter sometimes referred to as the Sih Nan College.)

pp. 111-112.
p. 18, ll. 21-22.
p. 31, l. 31.
p. 34, ll. 42-45.

4. On the 28th December, 1943, during the Japanese occupation of Hong Kong, an agreement in writing was made between the Defendants of the one part as vendors and the Respondent of the other part as purchaser whereby the Defendants agreed to sell the said property to the Respondent free from incumbrances for the sum of M.Y. (military yen) 62,000. The said agreement was entered into on behalf of the second Appellant by his attorney, Ho Ping Fai, his wife.

pp. 117-119.
pp. 22-24.
p. 37, ll. 1-20.
p. 38, ll. 7-14.

pp. 106-107.

5. On the date when the said agreement was made the said property, 20
which had been registered on the 15th March, 1943, in the Japanese "House Registry" on the application of the Defendants as the owners, was subject to two mortgages, viz., a mortgage to the Hong Kong and Shanghai Banking Corporation dated 10th December, 1932, to secure the repayment of the principal sum of \$120,000 and interest thereon and a mortgage of the same date to the Procurator in Hong Kong of the Dominican Missions in the Far East to secure the repayment of the principal sum of \$25,000 and interest thereon. (The said mortgages are hereinafter referred to together as "the two mortgages.")

pp. 148-153.

pp. 154-159.

p. 19, l. 10.
p. 35, l. 51-p. 36, l. 20.
pp. 176-177.
p. 160.
pp. 180-181.

6. On the 30th December, 1943, the Respondent paid to the 30
Defendants the sum of M.Y.35,000 which the Defendants used in part for the purpose of paying off the mortgage debts, i.e., they paid M.Y.25,308.97 principal and interest to the liquidator of the Hong Kong and Shanghai Banking Corporation, M.Y.7,000 principal and interest to the Procurator in Hong Kong of the Dominican Missions in the Far East and M.Y.646.50 solicitors' expenses and disbursements. Upon receipt of the said sum of M.Y.35,000 from the Respondent the Defendants executed a mortgage of the said property to the Respondent to secure the repayment thereof.

pp. 113-115.
p. 36, ll. 26-33.

pp. 120-121.
p. 37, ll. 36-40.

7. On the 17th February, 1944, the sale provided for by the said 40
agreement in writing was completed and the defendants (Ho Ping Fai acting on behalf of the second Appellant as his attorney) executed a "contract for sale and purchase" of the said property to the Respondent.

pp. 124-125.
p. 21, l. 35-p. 22, l. 15.
pp. 161-164.

8. On the 6th March, 1944, the said contract for sale and purchase was registered in the "House register of the Government of the Occupied Territory of Hong Kong" in accordance with the practice as to registration

then in operation in Hong Kong. In due course (after the end of the Japanese occupation of Hong Kong) an entry in green ink by virtue of Memorial No. 4113 recording particulars of the said contract for sale and purchase registered as aforesaid was made in the Land Office Register in accordance with practice. pp. 163-164.

9. On the 1st March, 1944, a tenancy agreement relating to the said property was made between the Respondent as lessor and "Sih Nan Middle School's Headmaster, Leung Sai Foon" (i.e., the second defendant). pp. 127-129.
p. 19, ll. 26-28.

10. On the 17th June, 1948 (i.e., after the end of the Japanese occupation of Hong Kong), there was enacted the Debtor and Creditor (Occupation Period) Ordinance, 1948 (No. 24 of 1948) (now Chapter 250 of the Revised Edition (1950) of the Laws of Hong Kong). It is common ground that by virtue of the provisions of the said Ordinance the said property remained subject to the two mortgages notwithstanding the purported discharge thereof by the payment of the mortgage debts.

11. On the 15th July, 1948, there was enacted the Land Transactions (Enemy Occupation) Ordinance, 1948 (No. 34 of 1948) (now Chapter 256 of the Revised Edition (1950) of the Laws of Hong Kong). The said Ordinance (Revised Edition) provides *inter alia* as follows :—

- 20 " 2. *Interpretation.*—In this Ordinance—
- ' assignor ' and ' assignee ' mean and include respectively the persons purporting to dispose of or acquire the property to which an instrument relates and include the executors, administrators or assigns of an assignor or assignee, as the case may be, and in the case of an assignor or assignee who disposed of or acquired any property as trustees of any trust, the persons from time to time lawfully acting as trustees of such trust ;
 - 30 ' green ink entries ' means the entries made in green ink in the Land Office registers recording particulars of transactions registered in the Japanese registers and identified in the Land Office registers by the initials of the Land Officer ;
 - ' Japanese assignment ' means an instrument registered or recorded in the Japanese registers purporting to relate to a disposition of any land, house or building otherwise than by way of mortgage or reassignment ;
 - ' Japanese house registration office ' means the office in which during the Japanese occupation were kept registers or records of houses and buildings and documents in relation thereto ;
 - 40 ' Japanese occupation ' means the period from the 25th day of December, 1941, to the 1st day of September, 1945 ;
 - ' Japanese registers ' means the registers kept by the Japanese house registration office and now lodged in the Land Office in which were recorded particulars of houses and buildings and transactions in connexion therewith ;

'Land Office registers' means the volumes kept in the Land Office at Victoria, wherein are entered, under headings descriptive of the properties to which the same relate, particulars of transactions and matters affecting leased Crown lands.

3. *Legalisation of green ink entries and their effect as notice.*—

(1) The green ink entries shall be deemed to have been lawfully made.

(2) Notwithstanding the provisions of section 4 of the Land Registration Ordinance, a green ink entry, including any variation or addition made by virtue of this Ordinance, shall, save in so far as any such entry, variation or addition is lawfully deleted, constitute for a period of seven* years from the date of the commencement of this Ordinance actual notice of the transaction particulars of which are recorded by the entry. 10

4. *Deletion of green ink entries after three years.*—After the expiration of the said period of three years the Land Officer shall delete from the registers all such green ink entries but such deletion shall be without prejudice to any right either within such three years or thereafter to register any instrument in respect of which a green ink entry has been made under the Land Registration Ordinance. 20

5. *Construction of instrument registered in Japanese registers.*—

(1) A Japanese assignment shall be construed and take effect as a valid and subsisting agreement by the assignor to assign on demand without further consideration and (save in so far as such agreement or other instrument otherwise provides) at the cost of the assignee or other person lawfully requiring the same the property to which such assignment relates in the form which would have been directed by the court prior to the Japanese occupation in a successful action for the specific performance of such an agreement. 30

(2) Without prejudice to the generality of the preceding subsection unless the Japanese assignment otherwise provides or the context thereof or the true intention of the parties otherwise requires, a reference to a house or building in such an assignment shall be deemed to include the land enjoyed with such house or building at the date of the execution of such assignment, together with all rights, members, easements or appurtenances belonging or appertaining to such land, house or building."

By virtue of the provisions of the said Ordinance— 40

(i) The contract for sale and purchase executed on the 17th February, 1944, is a "Japanese assignment" within the meaning of the said section 2 and the same is hereinafter referred to as "the Japanese Assignment"; and

* As originally enacted by Ordinance No. 34 of 1948 the specified period was two years. This was amended by Ordinance No. 17 of 1950 to three years, and further amended by Ordinance No. 23 of 1951 to seven years.

(ii) the said entry in green ink made in the Land Office Register as aforesaid is a "green ink entry" within the meaning of the said section 2 and the same is hereinafter referred to as "the green ink entry."

12. The Respondent by letter dated 15th December, 1948, called upon the Defendants pursuant to the Land Transactions (Enemy Occupation) Ordinance, 1948, to execute a confirmatory assignment of the said property in favour of the Respondent free of incumbrances. They failed to do so. p. 133.

10 13. By Writ of Summons dated 10th May, 1949, the Respondent instituted pp. 1-2.

THE PRESENT SUIT.

By her Statement of Claim dated 17th August, 1949, amended pursuant to Order dated 10th September, 1949, and re-amended pursuant to Order dated 31st December, 1949, the Respondent alleged *inter alia* (i) the agreement in writing of the 28th December, 1943, (ii) the two mortgages, (iii) the payment of M.Y. 35,000 on the 30th December, 1943, and the mortgage executed by the Defendants on receipt of the said sum, and (iv) the Japanese Assignment of 17th February, 1944. She further alleged that the said sum of M.Y. 35,000 was "advanced to the Defendants out of and on account of the purchase price" and that upon execution of the Japanese Assignment the said advance was by agreement between the parties treated as part payment in respect of the purchase price and that the Respondent paid to the Defendants the balance of the purchase price, viz. M.Y. 27,000. The Respondent also pleaded that the said property was still subject to the two mortgages by virtue of the Debtor and Creditor (Occupation Period) Ordinance, 1948, and that the Defendants had refused to discharge the two mortgages and to assign the said property to the Respondent. The claim was for— p. 2.
pp. 3-4.
p. 4, ll. 4-6.
p. 4, ll. 18-19.
p. 4, ll. 19-20.
p. 4, ll. 23-25.
p. 4, ll. 26-27.
p. 4.

30 "An order that the Defendants—

(i) do within three weeks discharge the said mortgages in accordance with the provisions of Ordinance No. 24 of 1948; in default of such discharge that the Plaintiff do have leave to discharge the same with liberty to recover from the Defendants the amounts paid in such discharge as well as the costs and other expenses incidental thereto.

40 (ii) an order that the Defendants do within three weeks execute an assignment of the said property to the Plaintiff and do all other things necessary to vest in her the legal estate in the said property; in default that the Registrar of this Honourable Court do execute and do all other things necessary as aforesaid.

(iii) possession.

(iv) mesne profits.

(v) costs of this action.

(vi) further or other relief."

14. The Appellants by their Defence dated 30th November, 1949, amended pursuant to Order dated 25th February, 1950, and re-amended pursuant to Order dated 23rd July, 1951 (in which they stated that the second Defendant was dead), *inter alia* admitted the agreement in writing of the 28th December, 1943, and the Japanese Assignment of 17th February, 1944, but alleged that the said agreement and the said Assignment were a sham prepared and intended to be used for the purpose of deceiving the Japanese Authorities. They further alleged that Ho Ping Fai was not authorised by the second Appellant to make the said agreement or to execute the said Assignment. The Appellants denied that the sum of 10 M.Y. 35,000 was advanced by the Respondent on account of the purchase price of the property and alleged that the sum was lent to the Defendants by the Respondent's husband one Li Koon Chun for the purpose of discharging the two mortgages. The Appellants further denied that the said sum of M.Y. 35,000 was by agreement treated as part payment in respect of the purchase price and denied that they or any of the Defendants received from the Respondent the sum of M.Y. 27,000 or any sum in respect of the purchase price. It was further alleged in the Defence that although the Appellants (and the second Defendant until his death) were joint tenants they were not beneficial owners and that at material times they 20 held the property as trustees for and on behalf of a charity namely the Sih Nan College as the Respondent and her husband well knew. It was alleged that the Defendants were not authorised under the terms of the trust to sell or agree to sell the property as the Respondent at material times well knew and that the Appellants would refer to the terms of the trust at the trial. By way of alternative it was alleged that the agreement in writing and the Japanese Assignment were signed in consequence of undue influence or duress: this last allegation was abandoned by the Appellants at the trial.

15. On the 23rd May, 1951, the Japanese Assignment was duly 30 registered in the Land Office Registry in accordance with the Land Registration Ordinance, 1844, by virtue of Memorial No. 204450.

16. The Land Registration Ordinance, 1844, provides *inter alia* as follows:—

“ 3. (1) All such deeds, conveyances, and other instruments in writing, and wills and judgments, made, executed, or obtained, and registered in pursuance hereof, shall have priority one over the other according to the priority of their respective dates of registration.

(2) All such deeds, conveyances, and other instruments in 40 writing, and wills and judgments, as last aforesaid, which are not registered shall (as against any subsequent *bona fide* purchaser or mortgagee for valuable consideration of the same parcels of ground, tenements, or premises) be absolutely null and void to all intents and purposes: Provided that nothing herein contained shall extend to *bona fide* leases at rack rent for any term not exceeding three years.’

4. No notice whatsoever, either actual or constructive, of any prior unregistered deed, conveyance, or other instrument in writing, or will or judgment, shall affect the priority of any such instrument as aforesaid as is duly registered."

The said Ordinance provides that registration shall be by means of a Memorial containing certain specified particulars.

17. The Respondent by her Reply dated 30th May, 1951, amended pursuant to Order dated 23rd June, 1951, and re-amended pursuant to Order dated 23rd July, 1951, pleaded *inter alia* (i) reliance on the green ink entry of the Japanese Assignment as affording the protection accorded to registration by and under Section 4 of the Land Registration Ordinance, 1844, (ii) that she is a purchaser in her own name and entitled to call for an assignment to her of the legal estate, the purchase money having been provided by Li Koon Chun, her husband, and (iii) reliance on the registration of the Japanese Assignment dated 23rd May, 1951, as affording her the protection accorded to registration by and under Section 4 of the Land Registration Ordinance, 1844. p. 5.

18. The Appellants delivered a Rejoinder dated the 7th July, 1951, in which they *inter alia* (i) denied that the green ink entry was a Memorial within the meaning of the relevant provisions of the Land Registration Ordinance, 1844, (ii) alleged that the document to which the green ink entry refers is not registered pursuant to or in the manner prescribed by the Ordinance, (iii) asserted that the green ink entry ought to be deleted, and (iv) made further allegations in the following terms :— p. 6.

" 5. In or about the month of December, 1943, the Plaintiff's said husband Li Koon Chun entered into a verbal agreement with the second Defendant for—

- (i) the loan to the Defendants mentioned in paragraph 6 of the Defence herein ; and
- (ii) for the sale to the said Li Koon Chun of the said premises for the sum of M.Y.80,000 (subsequently reduced to M.Y.78,000), or alternatively that the second Defendant should procure such sale to be made ; and
- (iii) for a lease by the said Li Koon Chun to the Defendants, or to the second Defendant as purporting to represent the Defendants or the said Charity, of the said premises for the purpose of carrying on the said Sih Nan College.

6. The said verbal agreement was made without the knowledge or consent of the first and third Defendants as the said Li Koon Chun well knew. The only transaction of which the first and third Defendants had knowledge and to which they consented was the loan mentioned in paragraph 6 of the Defence herein."

19. The action was heard in the Supreme Court, Original Jurisdiction, *coram* Howe, C.J., on 14 days from the 4th June, 1951, to the 16th August, 1951, and evidence was adduced on behalf of both the Respondent and the Appellants. pp. 10-86.

20. By his Judgment delivered on the 5th March, 1954, the learned Chief Justice found *inter alia* the following facts :—

pp. 87-94.

p. 90, l. 47.

p. 89, ll. 9-12.

pp. 145-147.

(1) That the Defendants had been owners of the legal estate in the said property as joint tenants since 1932 by virtue of an assignment in their favour which had been registered in the Land Office.

p. 89, ll. 14-33.

pp. 135-136.

pp. 212-214.

p. 49, ll. 20-22.

p. 58, ll. 1-2.

pp. 143-150.

p. 136, ll. 11-15.

(2) That on the 12th December, 1932, the Defendants executed a declaration of trust whereby they declared they stood possessed of the said property, subject to the two mortgages, in trust for Sih Nan College. The declaration of trust provided *inter alia* that the Defendants should not sell the property "except by the direction of the persons having authority in that behalf and in accordance with the constitution and for the use of" the Sih Nan College. 10

p. 89, l. 34.

(3) That the declaration of trust has never been registered in the Land Office.

p. 89, ll. 35-44.

p. 49, l. 20.

p. 55, ll. 29-44.

(4) That the Sih Nan School was managed by a Board of which the second Appellant was a member and that at the outbreak of the Pacific War there were seven members of whom only one was not in the colony at the time when the second Appellant left Hong Kong. The second Appellant left Hong Kong in 1942. 20

p. 89, l. 45-p. 90, l. 1.

p. 17, ll. 8-11.

(5) That in 1943 the Japanese liquidator of the Hong Kong and Shanghai Banking Corporation began to press for repayment of the bank's mortgage and as the school had no resources the second Defendant approached the Respondent's husband Li Koon Chun for a loan.

p. 90, ll. 10-12.

p. 17, ll. 26-36.

(6) That Li Koon Chun could not be persuaded to make a loan, the property was therefore offered to him for sale and he finally agreed to purchase at M.Y.62,000 free from incumbrances.

p. 90, ll. 12-16.

p. 18, l. 3.

pp. 108-109.

p. 110.

p. 35, ll. 21-23.

(7) That the Japanese liquidator fixed the 31st December, 1943, as the last day that he would allow for repayment of the bank's mortgage but the sale could not be put through so quickly as the permission of the Japanese for the sale had to be obtained. 30

p. 90, ll. 17-20.

pp. 111-112.

p. 18, ll. 20-22.

p. 31, ll. 31-35.

pp. 108-109.

p. 18, ll. 25-30.

(8) That on the 28th December, 1943, the agreement for sale was signed, Ho Ping Fai signing as attorney for the 2nd Appellant. The Plaintiff was named as purchaser. The necessary application for permission to sell was also signed.

p. 90, ll. 20-33.

pp. 113-115.

p. 18, ll. 35-45.

(9) That the sum of M.Y.35,000 was advanced by Li Koon Chun to enable the mortgage debts to be repaid and as the Japanese liquidator was not willing to refund this sum in the event of permission to sell being refused, Li Koon Chun was secured by a mortgage prepared and executed by the same persons who were parties to the agreement to sell. The sum of M.Y.35,000 advanced was to be treated as on account of the purchase price. 40

p. 18, l. 46-p. 19, l. 4.

p. 90, ll. 33-36.

pp. 122-123.

p. 32, ll. 2-3.

pp. 120-126.

p. 19, ll. 8-9.

(10) That the two mortgages were paid off and on the 17th February, 1944, the Japanese Assignment was executed and duly registered.

- (11) That in March, 1944, a tenancy agreement was signed between the Respondent as lessor and "Sih Nan Middle School's Headmaster Leung Sai Foon." p. 90, ll. 36-38. pp. 127-129. p. 19, ll. 26-28. p. 32, ll. 13-14. p. 38, ll. 15-23.
- (12) That Ho Ping Fai was properly empowered to sell as attorney for the 2nd Appellant. p. 90, ll. 43-46. pp. 117-119. pp. 22-24. p. 38, ll. 7-14.
- (13) That he rejected the allegation that the first Appellant and Ho Ping Fai were unaware of the contents and effect of the documents which they signed. p. 90, ll. 47-49. p. 59, ll. 14-23. p. 66, ll. 16-48.
- 10 (14) That the purchase price was as stated in the Japanese Assignment. p. 90, ll. 49-50.
- (15) That he rejected the allegation of the 2nd Appellant that he was unaware of what was intended when he signed the powers of attorney. p. 91, ll. 1-3. p. 50, ll. 10-11.
- (16) That there were some of the members of the Board of management in Hong Kong throughout the relevant period and that the trustees were unable to obtain any advice, consent, approval or disapproval from them because they quite deliberately made themselves unavailable thus forcing the trustees to act according to their own judgment. p. 91, ll. 5-15. p. 63, l. 26-p. 65, l. 13. pp. 201-203.
- 20 (17) That Li Koon Chun's Solicitor, Mr. Y. K. Kan searched the Land Office register before the transaction was entered into, and found the said property to be in the names of the three Defendants as joint tenants. Neither he nor the Respondent nor Li Koon Chun knew that the Defendants were trustees, and the Plaintiff was a *bona fide* purchaser for valuable consideration. p. 91, ll. 21-26. p. 38, ll. 1-7. p. 19, ll. 45-47. p. 39, ll. 1-3.
21. Upon the said findings of fact the learned Chief Justice decided that the Japanese Assignment operates by virtue of section 5 (1) of the Land Transactions (Enemy Occupation) Ordinance as a valid and subsisting agreement to assign on demand. p. 91, ll. 27-30.
- 30 22. The learned Chief Justice further decided that the Appellants had not discharged the onus upon them of proving that the Defendants had acted in breach of trust. He went on, however, to examine the position "on the assumption that there was a breach of trust." p. 91, l. 37-p. 92, l. 5. p. 92, ll. 5-6.
23. On the assumption that there was a breach of trust the learned Chief Justice decided that having regard to the provisions of sections 3 and 4 of the Land Registration Ordinance and the decisions in *Kwok Sui Lau v. Kan Yang Che*, 8 H.K.L.R. 52 and *Tsang Cheun v. Li Po Kwai* [1932] A.C. 715, the unregistered declaration of trust would be "absolutely null and void to all intents and purposes" as against the Respondent if the Japanese Assignment is to be regarded as a document registered under the Land Registration Ordinance. This involved in the first place a consideration as to whether the green ink entry relating to the Japanese Assignment afforded protection as a registration under the Ordinance. The learned Chief Justice decided that section 3 of the Land Transactions (Enemy Occupation) Ordinance did not have the effect of making a green ink entry equivalent to registration and therefore the green ink entry did not
- 40 p. 92, ll. 5-44. p. 92, l. 45-p. 93, l. 35.

p. 93, ll. 35-40.

avail the Respondent. On the other hand he decided that the registration effected on the 23rd May, 1951, could be relied upon by the Respondent : he dealt with this point in the following terms :—

“ I see no reason, however, to doubt that the registration effected on the 23rd May, 1951, can be relied upon ; it is permitted under section 4 of the Land Transactions (Enemy Occupation) Ordinance. There is no suggestion of fraud, and knowledge of the trust possessed at the time of registration is (as has been seen) immaterial.”

It was therefore held that as against the Respondent the trust was null 10 and void and that she was entitled to specific performance.

p. 94, ll. 8-14.

24. The learned Chief Justice made orders in terms of paragraphs (i) and (ii) of the claim and an order for possession with a stay of execution. He directed that (in default of agreement) there should be an inquiry as to mesne profits as from the 1st February, 1946, and gave leave to the Respondent to enter judgment for the amount agreed or found to be due. The costs of the action were awarded to the Respondent.

The Respondent submits that the said Judgment of the learned Chief Justice was, for the reasons therein stated, right, and that the orders made were right and proper to be made. The Respondent further submits 20 that the green ink entry of the Japanese Assignment in the Land Office Register affords protection to the Respondent as a due registration under section 4 of the Land Registration Ordinance, 1844, and that in any event the Respondent became by virtue of the Japanese assignment a *bona fide* purchaser for value of the said property within the meaning of section 3 (2) of the Land Registration Ordinance and that the unregistered declaration of Trust dated 12th December, 1932, was and is null and void as against her whether or not it was registered.

pp. 96-99.

p. 97, ll. 25-26.

25. On appeal, the Full Court (Gregg and Reynolds JJ.) began their judgment by stating “ we are in complete agreement with all the 30 findings of law and of fact ” made in the judgment delivered by the learned Chief Justice.

p. 97, ll. 28-38.

26. The principal submission for the Appellants on the appeal was stated in the Judgment of the Full Court to be—

“ that notwithstanding the fact that there was a written declaration of trust made by the Appellants on the 12th December, 1932, in respect of the property in question, there still exists a resulting trust in respect to the said property ; and that, as this resulting trust is not required to be in writing the Land Registration Ordinance which refers only to written instruments has no applica- 40 tion thereto. Accordingly, it is further submitted that the alleged resulting trust is operative against the Respondent notwithstanding the Appellants' failure to register the written declaration ; and that the learned Chief Justice's order for specific performance should be set aside as being in breach of it.”

The alleged resulting trust was said to have arisen because the said property was purchased with money which (apart from the money raised by the two mortgages) was "received from the school." The relevant part of the evidence as to the source from which the money came was the following passage in the examination-in-chief of the second Appellant—

"Premises at 1, Oaklands Park were at first rented. In 1932 premises were purchased for the school. Funds for purchase were \$25,000 from the school as well as \$25,000 from the Dominican Procurator and \$120,000 from H.K. & S. Bank on mortgage." p. 48, l. 41-p. 49, l. 5.

10 I see the document produced—it is an appeal to the public for subscriptions to buy—put in D.3." p. 192.

As appears from the Exhibits D.4 and D.5 the Sih Nan School is not a corporate body. pp. 193-201.

27. The Full Court stated the question to be decided in the following terms :— p. 98, ll. 21-25.

20 "Does the said declaration of trust in writing remove and replace any resulting trust that may have existed prior to the said declaration by reason of the assignment of the land in question to the Appellants and the fact that the land in question was bought by other people's money ?" "

The Court held that the written declaration of trust had been clearly and sufficiently expressed and, that being so, no resulting or implied trust could co-exist with it. Accordingly the Court upheld the decision of the learned Chief Justice that the unregistered written declaration is null and void as against the Respondent. With regard to the tenancy agreement the Full Court held that the Appellants had repudiated the same and that no tenancy now exists. The appeal was dismissed with costs. p. 98, ll. 26-28.
p. 98, ll. 45-48.
p. 99, ll. 2-12.
p. 99, ll. 13-15.

The Respondent submits that the said Judgment of the Full Court, for the reasons therein stated, is right.

30 28. The Respondent further submits that on the facts found the property was never subject to a resulting trust.

29. On the 11th August, 1954, an enquiry as to mesne profits was held by the Registrar of the Supreme Court in pursuance of the said judgment of the learned Chief Justice and the Registrar delivered a report of the said enquiry on the 23rd August, 1954. Index, p. vii.
Index, p. vii.

30. On the 29th September, 1954, the Full Court made an order varying the order of the learned Chief Justice relating to costs. p. 101.

31. On the 28th July, 1954, the Full Court granted provisional leave to appeal to Her Majesty in Council. A supplemental order, providing *inter alia* for a stay of execution, was made on the 19th October, 1954. pp. 99-100.
pp. 102-104.

32. On the 18th November, 1954, final leave to appeal to Her Majesty in Council was granted. p. 105.

33. The Respondent submits that the judgment of the Full Court should be upheld and this appeal dismissed for the following amongst other

REASONS

- (1) BECAUSE the Judgment of the Supreme Court, Appellate Jurisdiction (the Full Court), is right for the reasons therein stated and for other good and sufficient reasons.
- (2) BECAUSE the Judgment of the Supreme Court, Original Jurisdiction, is right for the reasons stated by the learned Chief Justice and for other good and sufficient reasons. 10
- (3) BECAUSE there have been concurrent findings of all the material facts by both Courts.
- (4) BECAUSE the sale of the said property was not in breach of trust.
- (5) BECAUSE the written declaration of trust made on the 12th December, 1932, was not registered.
- (6) BECAUSE the green ink entry of the Japanese Assignment in the Land Office Register affords protection to the Respondent as a due registration under section 4 of the Land Registration Ordinance, 1844. 20
- (7) BECAUSE the Japanese Assignment was duly registered in the Land Office Registry on the 23rd May, 1951.
- (8) BECAUSE the Respondent became by virtue of the Japanese assignment a bona fide purchaser for value of the said property within the meaning of Section 3 (2) of the Land Registration Ordinance and that the unregistered Declaration of Trust dated 12th December 1932 was and is null and void as against her whether or not it was registered. 30
- (9) BECAUSE the property is not subject to a resulting trust.
- (10) BECAUSE the property was never (alternatively never since the execution of the written declaration of trust on 12th December, 1932) subject to a resulting trust.
- (11) BECAUSE of the facts found and on the evidence the Respondent's title to the property is fully protected by the provisions of sections 3 and 4 of the Land Registration Ordinance, 1844. 40
- (12) BECAUSE on the facts found and on the evidence the Respondent is entitled to and it was right and proper that she should be granted the relief prayed for.

GEOFFREY CROSS.

RALPH MILLNER.

In the Privy Council.

ON APPEAL

*from the Supreme Court of Hong Kong
Appellate Jurisdiction.*

BETWEEN

CHU YAM OM and CHEUNG

LAN CHAU (1st and 3rd

Defendants) *Appellants*

AND

LI-TAM TOI HING . . . *Respondent.*

Case for the Respondent.

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