

13

IN THE PRIVY COUNCIL

No. 1 of 1972

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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

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B E T W E E N

LAKSHMIJIT s/o Bhai Suchit

(Defendant) Appellant

- and -

FAIZ MOHAMMED KHAN SHERANI  
as Administrator of the  
Estate of Shahbaz Khan deceased

(Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
28 MAY 1974  
25 RUSSELL SQUARE  
LONDON W.C.1

WILSON FREEMAN  
6/8 Westminster Palace Gardens,  
Artillery Row,  
London, SW1P 1RL

Solicitors for the Appellant

CHARLES RUSSELL & CO.  
Hale Court,  
Lincoln's Inn,  
London, WC2A 3AS

Solicitors for the Respondent

IN THE PRIVY COUNCIL

No. 1 of 1972

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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

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B E T W E E N

LAKSHMIJIT S/o Bhai Suchit (Defendant) Appellant

- and -

FAIZ MOHAMMED KHAN SHERANI  
as Administrator of the Estate  
of Shahbaz Khan deceased (Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE FIJI COURT OF APPEAL

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B E T W E E N

LAKSHMIJIT S/o Bhai Suchit

Appellant  
(Defendant)

- and -

10 FAIZ MOHAMMED KHAN SHERANI  
as Administrator of the Estate  
of Shahbaz Khan deceased

Respondent  
(Plaintiff)

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RECORD OF PROCEEDINGS

---



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No. 1

WRIT OF SUMMONS

In the  
Supreme  
Court

No. 219 of 1967

IN THE SUPREME COURT OF FIJI

Between:

20 FAIZ MOHAMMED KHAN SHERANI s/o Din  
Mohammed Khan Sherani of Suva Administrator  
of the Estate of Shahbaz Khan, deceased  
Plaintiff

No.1  
Writ of  
Summons  
23rd  
October  
1967

and

1. LAKSHMIJIT s/o Bhai Suchit of Sawani, clerk
2. And the Administrator of the Estate of Ujagir s/o Raj Kumar, deceased.  
Defendant

In the  
Supreme  
Court

No.1  
Writ of  
Summons  
23rd  
October  
1967  
(continued)

ELIZABETH II, by the Grace of God of the United  
Kingdom of Great Britain and Northern  
Ireland and of her other Realms and  
Territories Queen, Head of the  
Commonwealth, Defender of the Faith.

To 1. LAKSHMIJIT s/o Bhai Suchit  
of Sawani, Clerk and  
2. The Administrator of the Estate  
of Ujagir s/o Raj Kumar, deceased.

WE COMMAND you, That within eight days after 10  
the service of this Writ on you inclusive of  
the day of such service you do cause an  
appearance to be entered for you in an action  
at the suit of FAIZ MOHAMMED KHAN SHERANI s/o  
Din Mohammed Khan Sherani of Suva Administrator  
of the Estate of Shahbaz Khan, deceased. And  
take notice that in default of your so doing  
the plaintiff may proceed therein, and  
judgment may be given in your absence.

WITNESS the Honourable CLIFFORD JAMES HAMMETT 20  
Chief Justice of our Supreme Court, Suva,  
this 23rd day of October, 1967.

SHERANI & CO.

Per: Sgd. F.M.K. SHERANI  
Solicitors for the Plaintiff.

N.B. - This writ is to be served within twelve  
calendar months from the date thereof, or, if  
renewed, within six calendar months from the  
date of the last renewal, including the day of  
such date and not afterwards. 30

The defendant may appear hereto by  
entering an appearance either personally or by  
Solicitor at the Supreme Court Registry at Suva.

GENERAL ENDORSEMENT OF CLAIM

The Plaintiff's claim is for :-

- |    |    |   |  |
|----|----|---|--|
|    | 1. | A declaration that the defendant's right to use any part of the Plaintiff's land known as "Navitoko" (part of) comprised and described in the Certificate of Title No.7064 containing an area of about 604 acres and situate at Sawani in the district of Rewa in the Island of Vitilevu has been determined ("the said property"). | In the<br>Supreme<br>Court   |
|    |    |   | <hr/>  |
|    |    |   | No.1<br>Writ of<br>Summons<br>23rd<br>October<br>1967<br>(continued) |
| 10 | 2. | An Injunction to restrain the defendant by himself, his servants or agents from using any part of the plaintiff's "said property".  |  |
|    | 3. | An Injunction to restrain the defendant by himself, his servants or agents from removing any buildings, fences or other improvements on the plaintiff's "said property"   |  |
|    | 4. | Damages.  |  |
|    | 5. | Costs.  |  |
| 20 | 6. | Further and other relief.   |  |



In the  
Supreme  
Court

No. 2

AMENDED STATEMENT OF CLAIM

No. 2  
Amended  
Statement  
of Claim  
14th  
February  
1968

IN THE SUPREME COURT OF FIJI

No. 219 of 1967

BETWEEN:

FAIZ MOHAMMED KHAN SHERANI s/o  
Din Mohammed Khan Sherani of  
Suva Administrator of the Estate  
of Shahbaz Khan, deceased.

Plaintiff

10

- AND: 1. LAKSHMIJIT s/o Bahi Suchit of  
Sawani, Clerk AND  
2. THE ADMINISTRATOR OF THE ESTATE  
of Ujagir s/o Raj Kumar, deceased.  
Defendant.

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is the Administrator of the Estate of Shahbaz Khan, deceased, and as such is the owner of land known as Navitoko (part of) being part of the land comprised and described in Certificate of Title No.9410 containing an area of about 664 acres and situate in Sewani, in the district of Rewa in the Island of Vitilevu (hereinafter described as the "said property"). 20
2. That by a Memorandum of Agreement dated 16th February, 1948 the deceased Shahbaz Khan agreed to sell to the defendants an area by land contained in "the said property" consisting of 72 acres more or less for a price of £5,760.0.0. That the Defendants have made small payments in liquidation of the said purchase price and interest thereon and the balance monies remaining due and payable by the defendants to the plaintiff on this account as at 31st December, 1966 was £10,331.6.4. The 30

last payment made by the defendants on this account was the sum of £204.10.0. on the 31st December, 1960.

In the  
Supreme  
Court

- 10 3. That by a Memorandum of Agreement dated the 23rd August, 1948 the deceased Shahbaz Khan agreed to sell to the defendants a further area of land contained in "the said property" consisting of 138½ acres more or less for a price of £6952.0.0. That the defendants have made small payments in liquidation of the said purchase price and interest thereon and the balance remaining due and payable by the defendants to the plaintiff on this account as at 31st December 1966 was £8,276.2.11. The last payment made by the defendants on this account was the sum of £962.2.5. on the 31st January, 1960.
- 20 4. That Ujagir is now deceased and the defendant Lakshmijit is the Administrator of the Estate of Ujagir, deceased.
5. That the defendant Lakshmijit is still in occupation of a certain area of land contained in the "said property".
6. The defendants have for a number of years defaulted in the performance on their part of a number of provisions of the Agreements for Sale and Purchase mentioned in paragraph one and two hereabove
- 30 7. That the deceased Shahbaz Khan did on the 17th September, 1960 make a demand for the payment of the monies due by the defendants; that the deceased Shahbaz Khan made a further demand on 9th January, 1964 for the payments of the monies due by the defendants in default whereof the defendants were notified that powers conferred on the deceased Shahbaz Khan under the said Sale and Purchase Agreement shall be exercised.

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No. 2  
Amended  
Statement  
of Claim  
14th  
February  
1968  
(continued)

In the  
Supreme  
Court

No. 2  
Amended  
Statement  
of Claim  
14th  
February  
1968  
(continued)

8. That a further Demand dated 2nd March, 1967 for the payment of the monies due by the defendants were served on the defendants.
9. That a notice dated 2nd March, 1967 was served on the defendant Lakshmijit requiring the defendants to pay up the arrears of monies due by them or to vacate the piece of land in "the said property" occupied by them.
10. The defendants have made no reply to the Demands and Notice mentioned in paragraphs 7, 8 and 9 hereabove. 10
11. That again on the 3rd April, 1967 the Plaintiff gave to the defendants a further Notice in writing determining the Memorandum of Agreement dated 16th February, 1948 and the Memorandum of Agreement dated 23rd August, 1948 and demanded possession of the land and all improvements thereon and occupied by the defendants. 20
12. The defendants have failed and refused to vacate the land occupied by them.
13. The defendant still persist in occupying a portion of land contained in "the said property."

WHEREFORE THE PLAINTIFF CLAIMS:

1. A Declaration that the defendant's right to use any part of the plaintiff's land known as "Navitoko" (part of) comprised and described in the certificate of Title No. 9410 containing an area of about 664 acres and situate at Sawani in the district of Rewa in the Island of Viti Levu has been determined("the said property") 30
- 1.(a) Possession of the lands covered by agreements referred to in paragraphs 2 and 3 hereof.

Sgd.C.H.  
Grant  
19.10.70

2. An Injunction to restrain the defendant by himself his servants or agents from using any part of the plaintiff's "said property".

In the  
Supreme  
Court

---

3. An Injunction to restrain the defendant by himself, his servants or agents from removing any buildings, fences, or other improvements on the Plaintiff's "said property."

No. 2  
Amended  
Statement  
of Claim  
14th  
February  
1968  
(continued)

10 4. General damages.

5. Mesne Profits.

7. Costs

8. Further and other relief.

Dated at Suva this 14th day of February, 1968

SHERANI & CO.

Per: Sgd. F.M.K.Sherani

Solicitors for the Plaintiff.

To: The above named defendant and/or to his  
Solicitor D. Pathik, Esq., Suva.

In the  
Supreme  
Court

No. 3

AMENDED DEFENCE

No. 3  
Amended  
Defence  
9th  
September  
1970

IN THE SUPREME COURT OF FIJI

No. 219 of 1967

BETWEEN: FAIZ MOHAMMED KHAN SHERANI s/o  
Din Mohammed Khan Sherani of  
Suva Administrator of the Estate  
of Shahbaz Khan, deceased.

Plaintiff

AND: 1. LAKSHMIJIT s/o Bhai Suchit of 10  
Sawani, Clerk and  
2. THE ADMINISTRATOR OF THE ESTATE  
of Ujagir s/o Raj Kumar, Deceased.

Defendant

AMENDED DEFENCE

(Amended pursuant to Order of Court dated the  
27th day of August, 1970)

The First-named Defendant says :-

1. That he is the first-named defendant in this  
action (hereinafter referred to as the  
"defendant"). 20
2. As to item 1 of the Statement of Claim the  
defendant says that he is unaware of the  
truth or otherwise of the statements  
contained in the said item 1 and therefore  
he does not admit the same.
3. As to item 2 of the Statement of Claim the  
defendant admits the statement contained  
in the first sentence of the said item but  
denies each and every other allegation 30  
contained in the said item 2.

4. As to item 3 of the Statement of Claim the defendant admits statement contained in the first sentence of the said item but denies each and every other allegation contained in the said item 3.

In the  
Supreme  
Court

---

5. In answer to items 2 and 3 of the Statement of Claim the defendant wishes to state as follows :-

No. 3  
Amended  
Defence  
9th  
September  
1970  
(continued)

10

(a) That in addition to the said agreements referred to in the said items 2 and 3 a Deed dated the 24th day of September, 1954 and an agreement dated the 28th day of July, 1954 were executed in relation to the property the subject-matter of this action.

(b) On the 10th day of May, 1961 SHAHBAZ KHAN the deceased by letter addressed to the defendant and executed by him stated, inter alia, as follows :-

20

"I Shahbaz Khan (f/n Ado Khan) Landlord, Navitoko, Sawani, Naitasiri, wish to place on record that IN CONSIDERATION of your free services rendered to me for past several years, I confirm and rectify that upon my death I authorise my EXECUTOR or EXECUTORS ADMINISTRATOR to waive aside the balance of all principal and interests due to me on account of the sale price of my land to you vide the Sale and Purchase Agreements.

30

It is to be noted that the remainder of C.T.7064 is to be included in this sale price and that Ujagir, f/n Raj Kumar, is to be deleted from this deal as from this date.

40

You are to continue collecting the rents of this land and pay to me this amount which I shall credit to your account.

In the  
Supreme  
Court

---

All costs of transfer and disbursements of C.T.7064, C.T.5349 and C.T.5425 to be borne by you. I acknowledge receipt of £150.0.0. from you."

No. 3  
Amended  
Defence  
9th  
September  
1970  
(continued)

- (c) The defendant has made substantial payments under the said agreements of 16th February, 1948 and 23rd August, 1948 as well as under the said Deed of 24th September, 1954 and Agreement dated 28th July, 1954. The total amount paid amounts to approximately £6000.0.0 (Six Thousand Pounds). 10
6. As to item 4 of the Statement of Claim the Defendant denies the allegation contained therein.
7. As to item 5 of the Statement of Claim the defendant admits the allegation contained therein.
8. As to item 6 of the Statement of Claim the defendant admits that default was made in certain respects but refers to the said Deed of the 24th day of September, 1952 and the agreement of 28th July, 1954 referred to in paragraph 5 (a) hereinabove. 20
9. (a) As to item 7 of the Statement of Claim the defendant admits that notice of demand was sent on the 17th day of September, 1960 by Mr. Shaheed Mohammed, the then Solicitor for the deceased Shahbaz Khan but then subsequent to the said notice on the said 10th day of May, 1961 the said deceased executed the letter referred to in paragraph 5(b) hereinabove which is self-explanatory. 30
- (b) The notice of demand of the 9th day of January, 1964 was forwarded by BACHMAN the defacto wife of the said deceased. The deceased died on the month of June in 1964. The defendant showed the said demand notice to the said Bachwan who said 40

she was not demanding now because the defendant looked after the said deceased Shahbaz Khan and also looked after the said Bachwan.

In the  
Supreme  
Court

---

10. As to item 8 and 9 of the Statement of Claim the defendant admits the allegations contained therein.

No. 3  
Amended  
Defence  
9th

10 11. As to item 10 of the Statement of Claim the Defendant does not admit the allegation contained therein and states that he had verbally replied to the said demand notice stating that he did not owe anything.

September  
1970  
(continued)

12. As to items 11, 12 and 13 of Statement of Claim the defendant admits the allegations contained therein but repeats what he has said in paragraphs 5, 8, 9 and 11 hereinabove.

20 13. The defendants further say that the plaintiff or the deceased SHAHBAZ KHAN in his lifetime was guilty of laches, or alternatively by his conduct waived the payment of monies under the sale Agreements, and the Plaintiff is therefore estopped from recovering the same.

Particulars of laches and waiver on the part of the deceased

- 30 A. He made no effort to collect the sum due under the agreements, and he informed that the defendants that they need not pay;
- B. He expressly waited and did not press for any payments and accepted the services of the defendants on the basis that they would not have to pay;
- C. He waived all payments by writing under his hand dated the 10th May, 1961;



In the  
Supreme  
Court

No. 3  
Amended  
Defence  
9th  
September  
1970  
(continued)

Particulars of laches and Waiver on  
the part of the plaintiff as Administrator

- A. He took possession of the estate, and sought to take possession of it knowing of all the matters aforesaid;
  - B. He delaying the calling, and getting in of the Estate or giving of any proper accounts to the defendants;
  - C. He knew of the writing contained in the document dated the 10th May, 1961 and accepted its contents; 10
  - D. He wrongly purported enter into possession of the land instead of honouring the said agreement.
14. The defendants will rely on the Statute of Limitations applicable in Fiji and say that the plaintiff's claim is barred in law.
15. The defendants further say that the Statement of Claim does not disclose any cause of action in law. 20

COUNTERCLAIM

16. By way of counterclaim, the defendants repeats the allegations contained in paragraphs 1 to 15 of the Defence and says that if there was any default in law (which is denied) the defendants are entitled to relief both in equity and in law.

WHEREFORE the defendants counterclaim :-

- (a) For relief against forfeiture in respect of the two Sale Agreements on such terms and conditions as may be meet; 30
- (b) An order restraining the plaintiff from taking possession of the lands described in the claim;

(c) Costs.

DELIVERED this 9th day of September, 1970

RAMRAKHAS

Per: Sgd. K.C.Ramrakha  
Solicitors for the  
Defendants.

This Amended Statement of Defence is issued at  
the request of RAMRAKHAS the Solicitors for the  
defendants whose address for service is at the  
office of the said solicitors in K.W.March  
Limited's building, 77 Marks Street, Suva.

In the  
Supreme  
Court

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No. 3  
Amended  
Defence  
9th  
September  
1970  
(continued)

10

In the  
Supreme  
Court

No. 4

REPLY TO DEFENCE AND DEFENCE  
TO COUNTERCLAIM

No.4  
Reply to  
Defence  
and Defence  
to  
Counter-  
claim -  
September  
1970

IN THE SUPREME COURT OF FIJI

No. 219 of 1967

BETWEEN:

FAIZ MOHAMMED KHAN SHERANI  
s/o Din Mohammed Khan Sherani of  
Suva, Administrator of the  
Estate of Shahbaz Khan, deceased.

10

Plaintiff.

- AND: 1. LAKSHMIJIT s/o Bhai Suchit of  
Sawani, Clerk and
2. THE ADMINISTRATOR OF THE ESTATE  
of Ujagir s/o Raj Kumar, Deceased.

Defendant.

REPLY TO DEFENCE AND DEFENCE TO  
COUNTERCLAIM

1. The Plaintiff joins issue with the defendant on all the allegations contained in the Amended Statement of Defence, save in so far as the same consist of admissions. 20
2. The plaintiff denies that Shahbaz Khan was aware of, executed, or, in any way whatsoever was a party to, the alleged letter dated 10th May, 1961 mentioned in paragraph 5 (b) of the Amended Statement of Defence.
3. The plaintiff joins issue with the defendant on the contents of paragraph 5(c) of the Amended Statement of Defence. The plaintiff further says that up till 22nd 30

March 1967 the defendant had paid a sum of (€827.7.11) \$1654.79 on account of the Agreement dated 16th February 1948 and (£1103.13.8) \$2207.37 on account of the Agreement dated 23rd August 1948.

In the  
Supreme  
Court

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4. The plaintiff denies the contents contained in paragraph 9(b) and every part thereof of the Amended Statement of Defence.
5. The plaintiff denies paragraphs 13, 14 and 15 and every part thereof of the Amended Statement of Defence.
6. The plaintiff denies paragraph 13(c) (repeated) and 13(d); the Plaintiff says that he first became aware of the alleged letter dated 10th May 1961 when the same was mentioned to him by Messrs. Grahame & Co. then Solicitors for the Defendant, about the month of October, 1967.

No. 4  
Reply to  
Defence  
and Defence  
to Counter-  
claim -  
September  
1970  
(continued)

Sgd. C.H. Grant  
19.10.70

At about the same time the defendant was trying to get some one to attest a bogus-will allegedly containing the deceased Shahbaz Khan's thumb print and made in favour of the defendant.

WHEREFORE the plaintiff claims that the defendant's Counterclaim be dismissed with costs.

DELIVERED this            day of September, 1970

SHERANI & CO.

Sgd. F.M.K. Sherani  
Solicitors for the  
Plaintiff.

In the  
Supreme  
Court

No. 5

PROCEEDINGS

No. 5  
Proceedings  
19th October  
1970

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 219 of 1967

IN COURT

Before the Hon. Mr. Justice Grant  
Monday the 19th day of October, 1970 at  
9.30 a.m.

Between:

FAIZ MOHAMMED KHAN SHERANI  
s/o Din Mohammed Khan Sherani

Plaintiff

- and -

LAKSHMIJIT s/o Bhai Suchit  
Defendant

Mr. Kermode for the Plaintiff  
Mr. K.C.Ramrakha for the Defendant.

Kermode:

Agreed by consent to produce:

Ex. "1" 1. Agreement of 16.2.48 (Ex. "1")  
Ex. "2" 2. Agreement of 28.7.54 (Ex. "2")

Remaining documents in possession of  
Plaintiff.

Ex. "3" 3. Certified copy of death of  
Shahbaz Khan (Ex. "3")

Ex. "4" 4. Certificate of Title 9410 (Ex.4)

10

20

Ex. "5"	5. 17.9.60 Demand Notice (Ex.5)	In the Supreme Court
Ex. "6"	6. 17.10.60 Demand Notice with attached Schedule (Ex.6)	_____
Ex. "7"	7. Certified copy of Caveat. 5.2.68 (Ex.7)	No. 5 Proceedings 19th October 1970 (continued)
Ex. "8"	8. 23.8.48 Agreement (Ex.8)	
Ex. "9"	9. 24.9.52 Agreement (Ex.9)	

Apply to amend pleadings -

- 10 a) Typographic error in reply para 6 -  
"about the month of October 1961" -  
should have read "1967"
- b) Omission in prayer for relief as  
"1(a) claims possession of the land  
covered by the agreements referred  
to in Paras 2 and 3 hereof."

20 In para 11 of amended Statement  
of Claim sets out Plaintiff had  
demanded possession it is not  
followed by a prayer for possession.  
While it may be agreed if injunction  
granted this will have effect of  
vesting possession the 2 agreements  
covers only a portion of land -  
whereas Defendant has set up a claim  
entitled to whole of the land. This  
arisen out of pleadings and does not  
consist of new claim. Defendant can  
hardly be taken by surprise. There  
was an action in lower Court for  
30 possession.

Ramrakha:

Don't wish to be technical - but up to now  
Plaintiff has acted in person - not entitled to  
Solicitors costs. Heard friend purporting to  
appear as Counsel this morning. Should be  
declaration from Plaintiff hitherto acted in  
person and now instructs Solicitors to appear

In the  
Supreme  
Court

for him. This will affect issue of costs.  
Court will be faced with irregular record.

I resist the application to amend to claim  
possession.

No. 5  
Proceedings  
19th  
October  
1970  
(continued)

Rules relating to amendment on trial  
Volume 1 of White book p.301 - perfectly  
clear.

An adjournment would not meet ends of  
justice.

27.8.70 Summons - Defendant challenged  
statement of claim - that did not disclose  
cause of action. Heard on 27.8.70. This  
application dismissed by C.J. Once we  
challenged statement of claim it brought to his  
notice and was defective. He rested on  
statement of claim and proceeded to trial on  
it. This is not a continuation of an action  
in lower Court. This is a fresh writ. Relief  
he was claiming must have been apparent months  
ago - and not asked for.

10

20

We have raised the issue of limitations  
- so defence should not be jeopardised.

In reply to Court:

I raise no objection to the amendment  
of typographical error.

Kermode:

Pleadings indicate Sherani & Co. acted  
for Plaintiff. Know of no rule to preclude  
me acting as Counsel for Solicitor on record.

Counter-claim - prayer for relief (b) -  
Defendant aware it is claim for possession as  
asks for order restraining Plaintiff from  
taking possession.

30

Whole of Plaintiff's pleadings indicates  
he wants possession. Possession is a vital

issue on both sides. Submit adjournment is not necessary.

In the  
Supreme  
Court

---

Ramrakha:

Raised before G.J. that Plaintiff was a trade name. Basically Plaintiff is acting for himself.

No. 5  
Proceedings  
19th  
October  
1970  
(continued)

Kermode in reply to Court:

I have not formulated in writing the exact amendment for which Plaintiff asks.

10 Court:

The Plaintiff in my view could not have represented himself on the trial and appeared both as a witness and as Counsel. Indeed it is no doubt for this reason that learned Counsel Mr.Kermode has been instructed. Consequently I consider that notice should have been given to the Court that Mr.Kermode was acting for the Plaintiff - and if there is to be an adjournment of this trial this notice should be filed.

20

The application to amend the typographical error is granted and paragraph 6 of the Reply to Defence is amended to read, "October 1967"

However in regard to the application to add a prayer for possession this is a substantial amendment and is an application for relief which was not included in what is already an amended statement of claim. It is the duty of Counsel who applies at the trial to amend his pleading to formulate and state in writing the exact amendments for which he asks (Hyams v. Stuart King (1908) 2 K.B. 724).

30

I consider that if the amendment was so formulated in writing and an adjournment granted to enable defence Counsel to reconsider the position this would meet the justice of the



In the  
Supreme  
Court

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case and I am prepared to grant the application on these terms but not otherwise.

Mr. Kermode:

No. 5  
Proceedings  
19th  
October  
1970  
(continued)

If Court would adjourn to 11 a.m. I could formulate in writing - if adjournment is long enough for Mr. Ramrakha.

I was not aware of necessity to give notice to Court of my appearance when instructed by Solicitors ---

Court:

10

I thought I had made it clear that it is in this type of circumstances only that notice should have been given - so that the Court knows who is acting for the Plaintiff or whether he is acting in person. It is a matter of courtesy to the Court.

Kermode:

I agree as a matter of courtesy the Court should have been informed and I apologise. As I am now before the Court and if adjournment granted only until 11 a.m. do you wish this Notice to be given.

20

Court:

Not in those circumstances.

Ramrakha:

An adjournment until 11 a.m. will be long enough as it does not entail my applying for any amendment.

Order:

Adjourn to 11 a.m.

30

Sgd. Grant. J.

Resumption - Appearances as before

Court:

The prayer in the Plaintiff's amended Statement of Claim is amended in accordance with the Order now made herein.

KERMODE:

10 Headings disclose there was a default admitted by Defendant - para 8 of defence. Propose through Sherani to prove he is Administrator of Estate. Will produce copies of a/cs indicating when last payments made by Defendant and give instances of defaults under the agreements signed by the deceased.

20 Main issue is defence set up by Defendant - hinges on purported letter set out in para 5(b) of amended defence. Plaintiff does not admit it - and he will give evidence of facts to indicate that it was not in existence in 1961 and throw considerable doubt on its authenticity and evidence in anticipation of what Defendant will allege as to this letter - as to his credibility. Will call 3 witnesses. Mr.M.Gray will say at one stage acting for executor in purported will of Shahbaz Khan and advertised for claimants - and Defendant made no claim. 3rd witness if called will be in connection with 2 documents Mr. Sherani will be seeking to introduce.

In the  
Supreme  
Court

---

No. 5  
Proceedings  
19th  
October  
1970  
(continued)

In the  
Supreme  
Court

No. 6

FAIZ MOHAMMED KHAN SHERANI

Plaintiff's  
evidence

P.W.1 - FAIZ MOHAMMED KHAN SHERANI  
s/o Din Mohammed Khan Sherani.  
Sworn in English.

No.6  
Faiz Mohammed  
Khan Sherani  
Examination

I live at 23 Navaga Place Tamavua, Suva  
Solicitor. I am Administrator with Will of  
Estate of Shahbaz Khan. This is the Letters  
of Administration with Will of the estate.

Ex."10" (Ramrakha: No objection produced Ex.10) 10

I am the Plaintiff in this action. Prior  
to granting of administration there was a  
Probate Action No.3 of 1964 in which Bachwan the  
de facto wife of the deceased in accordance with  
will of 27.9.63 of Shahbaz Khan applied for  
Probate. She died in October 1964 and next of  
kin of deceased who were not in Fiji were  
substituted as Plaintiff.

[Ramrakha: Submit this is hearsay]

This is of my own personal knowledge. 20

Defendants in that action were firstly Faiz  
Mohammed who himself set up a Will of deceased  
Shahbaz Khan which purported to leave all his  
property to Faiz Mohammed except \$300 to Bachwan.  
2nd and 3rd Defendants were the District  
Administrator who alleged at time of execution  
of Shahbaz Khan's Will of 27.9.63 he was not of  
sound mind memory and understanding. 3rdly  
S.A.Shah who alleged that because of Will of  
Bachwan of which he was executor the properties 30  
of Shahbaz Khan passed to him. Action tried  
in Supreme Court before Mr. Justice Knox-Mawer.  
The present defendant himself gave evidence on  
behalf of Faiz Mohammed on 1.7.66. The action  
was determined and I was granted Letters of  
Administration with Will annexed. In that  
Action Faiz Mohammed was trying to prove a will

in Faiz Mohammed's favour

In the  
Supreme  
Court

Q. In that hearing in which Defendant gave evidence did he disclose he had a letter of 10th May 1961 from Shahbaz Khan.

Plaintiff's  
Evidence

Ramrakha:

Best evidence must be produced - certified copy of proceedings. Secondly it is comment and cannot be produced at this stage.

No.6  
Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

Kermode:

10 I will confine my questions to direct evidence\_7

Q. Did Defendant disclose to you when these proceedings were going on that he held this letter of 10.5.61 - at the time of this action?

(Ramrakha: No objection)

20 A. No. The Defendant did not disclose to me orally or in writing the claims he has made of a letter of 10.5.61 and the first I heard of it was after issue of Writ of Summons in this action from their Solicitors of Defendants Grahame & Co. in about October 1967.

30 After I was instructed to act in this estate I advertised in Fiji Times on 3 occasions and in Fiji Royal Gazette on one occasion asking for claimants to the estate. The Defendant did not lodge any claim with me nor verbally advise me of any claims against estate. After acting in estate I made demands in writing on Ujagir and Lakshmijit This is a copy of the demand and attached accounts dated 2.3.67.

This a copy of the demand and attached accounts dated 9.1.64 made by me acting for Bachwan while deceased was alive.

In the  
Supreme  
Court

(Ramrakha: No objection

Ex.11 Produced 9.1.64 as Ex.11  
Ex.12 2.3.67 as Ex.12)

Plaintiff's  
Evidence

P.16 On 2.3.67 I also wrote to Defendant  
Ex.13 and Ujagir and produce a copy of my  
letter (produced Ex.13).

No. 6

Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

Ex.14 I followed it up by letter on 3.4.67,  
by which time Ujagir had died. This is  
a copy (produced Ex.14) pursuant to  
these letters there was no response from  
Defendant. I have never heard from the  
Defendant at any stage. Neither  
Defendant nor anyone else raised the  
alleged letter of 10.5.61.

10

Q. Ex.4 indicates 2 caveats lodged by  
Ujagir and Defendant re 72 acres  
and 138½ acres and memorials indicate  
they were cancelled. Did you on  
behalf of estate give notice of removal  
to Defendant?

20

A. After I had been granted L/A and  
because I wanted to sell the property  
to pay death duties I applied to  
Registrar of Titles in accordance with  
Land Transfer Ordinance for removal  
of these caveats. They were duly  
removed as endorsed on Ex.4 on 10.1.68.

Q. Was there any move by Defendant to  
retain the caveat on the title?

A. No. Otherwise I would have been served  
with Writ by Defendant or notice by  
Registrar. I was not.

30

The land 9410 - the Defendant lives  
on part of it. There were a number of  
other occupiers also living on it when  
I took over administration. They  
lived not very far - 20 to 40 chains -  
from Defendant's house. When I  
decided to sell this land I issued

Magistrates' Court Writ at Nausori  
Magistrate's Court against one Govind  
Singh one of the occupier and  
obtained an order for possession and  
mesne profit. Similarly with one  
Jai Narayan. Similarly with one  
Gayadhar. Similarly with one Shiu  
Prasad. In each case I obtain an  
order for possession and mesne profits.  
Similarly with other tenants - an  
order was made in Court or they came  
to my office and settled. The Defendant  
never interfered and questioned my  
right to take action against these  
occupiers. Shiu Prasad defended the  
action. He was present in Court on  
1.7.66 but Defendant did not give  
evidence or inform me of anything  
regarding a letter of 10.5.61. From  
26.9.63 to till a few days before  
Bachwan died in October 1964 I  
regularly visited house in which Shahbaz  
Khan and his defacto wife lived - both  
as a friend and Solicitor. Bachwan is  
the person whose thumb print appears  
on demand notice of 9.1.64. She put  
it on in my presence. I was acting  
on instructions to get the money in  
and those instructions were never  
varied or cancelled. In regard to  
para 11 of the Defence - Defendant  
has never spoken to me until today  
and he certainly did not talk to me  
about any claim personally.

In the  
Supreme  
Court

Plaintiff's  
Evidence

No. 6  
Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

10

20

30

Q. When Shahbaz Khan was alive the monies  
due under the agreements - were they  
covered by securities?

Ramrakha:

40

This is not pleaded or covered by the  
pleadings and no claim is based on them.  
I object to their production.

In the  
Supreme  
Court

Kermode:

In rebuttal of letter of 10.5.61 Does not need to be pleaded. Mortgages are disclosed in affidavit of documents.

Plaintiff's  
Evidence

I do not propose to produce them as they are not relevant to the point I wish to prove.

No. 6  
Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

Court:

The question may be answered. If it transpires that it is irrelevant the Court will ignore it. 7

10

A. They were covered by Mortgage Nos. 44796 44797 and 44798.

Q. After you called up the loan what action did you take as to the land covered by these mortgages.

A. I duly advertised under power of the mortgages for the sale of these titles. The Defendant never approached me or resisted the sale of these titles and I did sell Certificate of Title 5349 belonging to the Defendant and 2 others and 5425 belonging to Bhai Suchit who I believe is the Defendant's father. This is the advertisement extracted from Fiji Times. It appeared on 3.6.68 and on 8.6.68 and 12.6.68. I have here the Fiji Times of 8.6.68 and 12.6.68. (Produced Ex.15, 16 and 17)

20

Ex. "15,  
16 and  
17"

After the Sale I submitted accounts to the Defendant. These are copies of the accounts (Produced Ex.18)

30

Ex. "18"

I cannot from my own knowledge say how they were submitted. They should have been delivered by a bailiff or messenger boy.

Q. A/c shew the balance of monies realise were applied to balance of monies owing under Sale and Purchase Agreement

In the  
Supreme  
Court

A. Yes.

Plaintiff's  
Evidence

10 There are copies of the accounts that Warren, Leys & Kermodé prepared prior to my coming into the picture. I think on 31.1.60 under one of the Mortgages Shahbaz Khan had sold CT5477 under Mortgage 35678 and of monies from that sale £962.2.5. was credited to sale and purchase agreement of 16.2.48. In 1960 Warren, Leys & Kermodé were acting for Shahbaz Khan (produced Ex.19)

No. 6  
Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

Ex."19"

Mr. S.A.Sharma was a Solicitor acting in Fiji. I saw him in Tamavua in September 1970. I know Ram Lakhan.

20 Q. Did he serve you with certain documents?

A. Yes.

Q. When?

Ramrakha:

Not relevant and document not disclosed and produced under affidavit of documents.

Kermodé:

Nature of documents is

- 1) What is referred to as bogus will in para 6 of reply.
- 30 2) A document purporting to be in handwriting of defendant and referring to a Will.

They are disclosed in Affidavit of documents. Learned friend (Mr Sherani) with due respect referred to them in part 2 - which sets out what



In the  
Supreme  
Court

the documents are. Neither Defendant nor  
Solicitor has at any time inspected the  
documents.

Plaintiff's  
evidence

Ramrakha:

No. 6  
Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

Is learned friend conceding Plaintiff  
entitled to claim privilege? It is well  
known rule party need not produce his evidence.  
These documents have been put in 2nd part of  
Schedule. Secondly learned friend now concedes  
paper writing in connection with a will not  
the "above" will. He claimed privileged from  
production - he cannot now produce them in  
Court. If he intends to use documents in Court  
it should be disclosed and there should be  
discovery of it. There has been no discovery  
of these documents.

10

Kermode:

This document was pleaded in para 6 of  
reply. It is disclosed in affidavit of  
documents. Clear from pleadings they are  
relevant and should have been disclosed in part  
1. Learned Counsel could have compelled  
production of these documents. He is not taken  
by surprise purpose of discovery is to make  
known what documents would be relied on so other  
side not taken by surprise. Defendant not  
taken by surprise. The documents should be  
admitted.

20

As to relevancy - it will go to show  
it came from Defendant's possession some years  
after alleged letter of 1961.

30

It goes to Plaintiff's contention that  
letter is neither a valid document nor has  
any legal effect whatsoever.

Court:

The Plaintiff in his affidavit of  
documents has claimed privilege in respect of  
the documents which he now wishes to put in

evidence. By including them in the second part of the schedule 1 he has sworn that they are not documents which he can be compelled to produce or in respect of which the Defendant is entitled to discovery or inspection. I consider that by his own affidavit he is estopped from now producing them on this hearing and I so rule.

Sgd. Grant J. 7

10 Before Shahbaz Khan's death I was a frequent visitor to his house. Before September 1963 I did not go frequently but after that I would go every 2nd or 3rd day. I never saw the Defendant there. Others from the neighbourhood used to come.

Q. Did you include in the a/cs of the estate - did you include this 644 acres plot?

A. Yes.

Q. And Estate duty has been raised on it.

20 A. Yes.

I have paid \$38,576 Estate duty.  
About \$8,000 remains owing plus interest.

30 I also issued writs in Suva Magistrate's Court against some Chinese tenants who had a tenancy agreement - Jo Chee & Jo Sat Ting - In respect of a certain part of the land included in CT 9401. There were a few more Chinese tenants. One was Steven Joe. There was no interference by the Defendant in any of those actions.

Q. When you took possession of estate did you know as Defendant stated that deceased had informed Defendants they need not pay any money under these agreements.

A. No.

In the  
Supreme  
Court

Plaintiff's  
Evidence

No. 6  
Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

In the  
Supreme  
Court

Plaintiff's  
Evidence

No. 6  
Faiz Mohammed  
Khan Sherani  
Examination  
(continued)

I did not delay the getting in of the estate. The dealing of getting in the probate was because the Civil Action 3 of 1964 was pending and probate was not granted to me until action was determined. I did not know of the alleged letter of 10.5.61 at time I took action in Magistrate's Court. I entered into possession of the land by sending an employee of mine to keep check of the land and to see no timber was cut from it - and I consider my action 10  
was lawful. Defendant has never called on me prior to defence herein to honour any agreement relating to this land.

- Q. One of agreements contains provision Defendant and co-purchaser were to carry out survey and subdivide and obtain separate titles?
- A. Both the agreements provide this. Do you acknowledge the Defendant has never done it. 20
- Q. From time you were instructed in 1964 has Defendant made any payment to you as Solicitor for Shahbaz Khan or later as Administrator of estate
- A. No except in November 1968 on sale of CT.5439 belonging to him and 2 others a certain sum in access of loan. Amount was applied towards one of the agreements. There was no complaint from the Defendant. Even up to today he has not objected to this.30

Witness in reply to Court:

Mr. Faiz Mohammed who was Defendant in the Supreme Court action I referred to was not me.

Cross-  
Examination

XXM:

- Q. The will under which you became Administrator was challenged after death of deceased?
- A. Yes.

Q. And 1st Defendant did not give evidence in your favour?

In the  
Supreme  
Court

A. To some extent I think it was.

Q. You did not approach him personally?

Plaintiff's  
Evidence

A. No.

Adjourned to 2.30

No.6  
Faiz Mohammed  
Khan Sherani

Sgd. Grant J.

Cross-  
Examination  
(continued)

Resumption

Appearances as before.

10 Court:

I have received the following telegram (read).

Kermode:

I will not be calling Shaheed Mohammed.

Plaintiff continued reminded still under oath.

XXM Continued.

from 1964 to 1967 I did take steps to collect in the estate.

20 Q. What steps since May 1964 before becoming administrator?

A. No steps in respect of this particular debt - because I was not the administrator and when Shahbaz Khan died he had appointed Executrix by her will who died in October 1964 and the Supreme Court action was pending.

When notice given by Bachwan in 1964 Shahbaz Khan was still alive. The Defendant lived on other side of road about 20 chains away.

In the  
Supreme  
Court

Plaintiff's  
Evidence

No. 6  
Faiz Mohammed  
Khan Sherani

Cross-  
Examination  
(continued)

On night Shahbaz Khan died I did not see Defendant at his (Khan's) house. I never saw him at his house. I went to his house the night he died - I think early part of evening, I deny Defendant and I were sitting together. There were a number of people there but I did not see Defendant. I agree the action I took v. Tenants was after I became administrator. I agree I also took action v. defendant at that time. I agree Mr. Jamnadas of Grahame & Co. appeared for Defendant. When I issued Magistrate's Court Writ. 10

Q. When you sold Waimanu Road property - C.T.5477 and 5349?

(Ex.18) - to whom did you sell it

A. One to Mahendra Pal Singh and the other to Mohammed Hanif Khan. I sold to Mr Singh for £2,000. It consisted of a very small area of land with shack in which Defendant's father lived. CT.5349 had 21 9/10ths of a perch and a house on it that was sold for £2,000. I think it was a residential section. The property sold to Mr. Khan was 21 9/10ths of a perch sold for £500. It was residential. Mr Khan was an employee of mine. He still is and is related to me. 20

Q. He is the same person who witnessed the Will?

A. I think it is correct - the Will is embodied in the Probate. 30

In November 1968 I sold these properties. I agree at that time this action was still pending and Defendant represented by Mr. Pathik. I did not write to Mr Pathik and give him the accounts.

Q. What relief do you want in this action?

A. As in Statement of Claim.

Q. What is it?

	(Plaintiff read claim from Statement of Claim)	In the Supreme Court
	Q. You are seeking to rescind the agreements?	<hr/>
	A. No.	Plaintiff's Evidence
	Q. What do you wish to achieve?	No. 6
10	A. I want vacant possession of the land covered by the 2 agreements and a declaration that the Defendant's right to use any part of the 664 acres in title 9410 is determined and for an injunction to restrain Defendant using it and injunction to prevent Defendant removing buildings etc and I ask for costs.	Faiz Mohammed Khan Sherani Cross-Examination (continued)
	Q. When did you determine the agreements?	
	A. Finally on 3.4.67 by the letter written to him after that I considered the agreements dead.	
	Q. You want to take away the land and keep the monies received?	
20	A. For vacant possession and under provision of agreement for the very small sum paid to be forfeited.	
	In the a/cs you filed you applied £2183.5.0 towards monies due to estate of Shahbaz Khan ( <u>last entry on a/c</u> )	
	A. I agree. It was applied not only towards the sale and purchase agreement but also in satisfaction of Mortgages.	
30	Q. Which part applied to sale and purchase agreement and which part to mortgages?	
	A. £1107.3.6 was applied towards the sale and purchase agreement and balance to the mortgages.	

In the  
Supreme  
Court

Plaintiff's  
Evidence

No.6  
Faiz Mohammed  
Khan Sherani

Cross-  
Examination  
(continued)

Q. Have you shown in these proceedings that you applied £1107.3.6 under the sale and purchase agreement?

A. No.

Q. Why?

A. This was in November 1968 and writ was issued in October, 1967.

Q. So no opportunity for you to do so?

A. No- because I do not think by virtue of the provisions of the two agreements it was necessary for me to show. 10

Q. Under paragraph 3 of Reply you allege 2 sums of money having been paid under the agreement - why not show there the £1107.3.6?

A. Because amounts mentioned in paragraph 3 of reply are obtained from the a/cs sent to Defendant by Warren, Leys and Kermode and the £1107 was realised after the 2 agreements were determined - so I did not think it at all necessary to show the receipt of £1107 in these proceedings. 20

Q. If agreements dead in your view in April 1967 how could you keep these monies?

A. Because agreements provide that any monies coming into hands of vendor would be forfeited to him.

Q. Would it be correct you sold these 2 properties without any reference to Mr. Pathik?

A. Yes. 30

Re-ex: Nil.

Sgd. Grant, J.

No. 7

HENRY ARTHUR MARQUARDT-GRAY

In the  
Supreme  
Court

P.W.2 - HENRY ARTHUR MARQUARDT-GRAY  
applies to affirm as an unbeliever

Plaintiff's  
Evidence

Order: Application granted (Witness affirmed)

No. 7  
Henry Arthur  
Marquardt-  
Gray

10 I am Solicitor and live at 202 Princes  
Road, Tamavua. I remember Shahbaz Khan -  
and one Faiz Mohammed. I acted for Faiz  
Mohammed in probate action in 1963. He purported  
to be executor in a will not produced to me,  
I advertised for claimants in Fiji Times. I  
see the 1st Defendant in Court. I received no  
claim from him so far as I recollect in regard  
to the estate.

Examination

He was not involved in the Probate Action.  
I did not take part in the proceedings. I  
passed the brief on. I know S.D.Sharma a  
Solicitor.

XXM: Nil.

20

Sgd. Grant, J.

No. 8

RAM LAKHAN

In the  
Supreme  
Court

P.W.3 RAM LAKHAN s/o Gaya Dass  
Sworn in Hindi.

No. 8  
Ram Lakhan

30 I live at 10 Kikau Street, Suva and am a  
Bailiff. I know the Defendant Lakshmijit and  
have for 10 years. Have visited his home.  
His occupation now is Clerk or Accountant. He  
used to be known as master. I remember when  
Supreme Court Action was going on over Shabaz  
Khan's will when Faiz Mohammed was involved.

Examination



In the  
Supreme  
Court

No. 8  
Ram Lakhani

Examination  
(continued)

About that time I went to a man called Sarwan. He is a friend of the Defendant. I met him and spoke with him. As a result of what he said I told him to do something. After this I met Lakshmijit the defendant. I met him in front of the Yee Joy's shop in Cumming Street. He spoke to me.

Q. What did he say?

Mr. Ramrakha:

I object - obviously an attempt to introduce 10 something on the documents your Lordship has ruled cannot be produced in evidence.

Court:

I cannot deal with the objection until I know the witnesses' answer to the question<sup>7</sup>

A. He asked me whether Sarwan spoke to me about him and I said yes. He said he has got a will with Shahbaz Kan's thumb print on it and it has to be witnessed by a Solicitor now. He said that being a 20 bailiff you are well known to all the Solicitors in the City and if you manage to have this problem fixed for me I will give you £1,000 in cash and £1,000 to the Solicitor who is going to witness the will. He further said when he got all the properties in his name he would give some more thing to us. He said at present he has not any money with him but promised 30 when his matter is fixed he will give us the money.

Court to Mr. Ramrakha:

Now we know the witness's answer do you wish to renew objection or not pursue it.

Ramrakha:

Yes I object it is not relevant - and leans towards the document on which Court has ruled.

Kermode:

It is very relevant. After death of Shahbaz Khan indicates Defendant in possession of will not witnessed offering him all the property - and offering £2,000 to fix it up. Most relevant as to his purported letter of May 1961.

Court:

10 I consider the evidence relevant. So far no attempt has been made to lead secondary evidence of the contents of documents which I have ruled the Plaintiff is estopped from producing. At this state the evidence is simply of a conversation between this witness and the Defendant. The objection is overruled\_7

(Witness continues)

20 I told him you have not got the money at present and if I happen to fix your problem where will you get the money from. He went to his office. Sometime later I was employed by Mr Sherani to look after this land on which Defendant lived. On one occasion I saw some logs had been cut on this land. I spoke to Defendant about it.

Q. What did Defendant say?

30 A. (long pause) The defendant said a case is pending with Mr Sherani and himself and the matter will be finalised in the Court.

Q. Did defendant speak to you about the land?

A. Yes. He said to inform Mr Sherani if he gives me 10 acres of land then he will withdraw the case pending between himself and Mr Sherani and he said the deceased Shahbaz Khan promised to give him 10 acres of land. This conversation was on a later

In the  
Supreme  
Court

Plaintiff's  
Evidence

No. 8  
Ram Lakhan

Examination  
(continued)

In the  
Supreme  
Court

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Plaintiff's  
Evidence

No. 8  
Ram Lakhan  
Examination  
(continued)

occasion than the conversation about the logs.

Q. When the logs had been discussed was there any conversation about the land?

A. Both discussions took place on the same day.

Q. Did defendant object to you looking after the land for Mr Sherani?

A. Not to me.

Q. Did he complain to you it was his land and you were not to do anything on it - and anything of this nature? 10

A. No.

Cross-  
Examination

XXM

I am not still employed by Mr. Sherani. I agree I used to do work for his office.

Q. From which year to which year?

A. In 1967 and 1968

Q. Before that did you do any work on his instructions? 20

A. I served notices and summons if there were any.

Q. From when?

A. I started from 1958 and kept on until 1962 and 1963.

Q. Since you became bailiff you were frequently at Sherani's office?

A. No. I did work for all Solicitors. I did not keep books of what work I did.

	Q. Did you not keep them for income tax purposes?	In the Supreme Court
	A. No. I am paid after deduction of basic tax. It is deducted by whoever pays me.	
	I have known Mr Sherani for a long time. I know him quite well. I work now for Public Trustee Official Receiver, Native Land Trust Board, Bailey Estate, Ross Estate.	Plaintiff's Evidence No. 8 Ram Lakhani
10	Q. What date did conversation take place outside Yee Joy's shop?	Cross-Examination (continued)
	A. October 1966. I cannot remember the day. At that time I knew Shahbaz Khan was dead.	
	Q. When he asked you to get Solicitor to witness a will did you agree to do it or not?	
	A. I said I would discuss with Solicitors and let him know.	
	Q. In other words you agreed?	
20	A. Internally I was not happy about it.	
	Q. He was asking you to commit a Criminal offence?	
	A. Yes. That is why I wanted to inform the Police. I did not inform the Police. I informed Mr Sherani. I was not employed by Mr Sherani but I served notices and summonses as I did other offices.	
	Q. Why go to Mr Sherani first and not the Police?	
30	A. I was aware Mr Sherani was looking after the estate and the Probate Action was over. I agree I have not been to the Police at all.	

In the  
Supreme  
Court

---

Plaintiff's  
Evidence

No. 8  
Ram Lakhan

Cross-  
Examination  
(continued)

Q. Were you not introduced to Defendant by Buturu Chanderman?

A. No. I was introduced by Sarwan.

Q. I put to you that prior to that Defendant did not know you at all?

A. He knew me. I went to his house and his store.

Q. You have never been to his house?

A. I have been on many occasions.

Q. You went to Defendant and told him there was a will in his favour in Mr McNally's office - a Solicitor in Cumming Street.

10

A. No.

Q. Did Defendant told you if there was a valid Will in his favour and if admitted to Probate and if he got what was legally his he would give you £1,000.

A. That is not true.

Q. And at no stage did Defendant ask you to do anything improper?

20

A. He did.

Q. When Sarwan spoke to you did he ask you to do anything improper?

A. No.

Q. Were you looking after all the properties on Shahbaz Khan's estate? What work were you doing?

A. Serving summonses and notices.

Q. Were you tilling?

A. No. Keeping an eye on the land to see no one stole any logs or anything.

In the  
Supreme  
Court

Q. Just moving around and keeping an eye on the land. You would not enter Defendant's land?

Plaintiff's  
Evidence

A. I served him with notices.

No. 8  
Ram Lakhani

Q. What were you paid for looking after land?

A. For this and serving summons and notices £5 per week - for 8 or 9 months. I was living in Samabula not on the land. I would serve summonses and notices in the daytime. There were lots of tenants there and I visited the land with summonses and notices 2 or 3 days per week.

Cross-  
Examination  
(continued)

10

Q. Put to you you never had conversation with Defendant about his land or logs?

A. I did.

Q. And no question of Sarwan introducing you to defendant.

20 A. He did.

Re-ex: Nil.

Close of Plaintiff's case.

Order:

Adjourned to 9.30 a.m. 20th October, 1970

Sgd. Grant, J.

2nd day

Tuesday 20th October, 1970 at 9.30 a.m.

Mr. Kermode for the Plaintiff.  
Mr. Ramrakha for the Defendant.

In the  
Supreme  
Court

No. 9

LAKSHMIJIT

Defendant's  
Evidence

LAKSHMIJIT s/o Bhai Suchit,  
Sworn in Hindi. Of Navitoko  
Sawani.

No.9  
Lakshmijit  
Examination

I am 53. I knew the late Shahbaz Khan from my childhood. My father and uncle were on good terms with him. My uncle was Ujagir. He died some years ago. Shahbaz Khan was a wealthy man. I had dealings with him. I bought land from him in 1948. The money for it was coming out of my cane farm at Wainibokasi. When the Nausori Mill closed in 1959 Shahbaz Khan made an arrangement with me over property at Waimanu Road. \$50 was being paid by one Willie Sing Lee as rent of one of the properties and was going to Munro, Warren, Leys & Kermode in reduction of my debts to Shahbaz Khan. I knew Mr Shaheed Mohammed a Solicitor and S.D.Sharma a Solicitor. The property Willie Sing Lee was renting was sold by Shahbaz Khan. I think through Shaheed Mohammed. I did not then have any income to pay off the debt. At that time I was living in Suva at Dalainavesi. Trouble took place on the sale between my Uncle Ujagir and Shahbaz Khan. Later Shahbaz Khan made an agreement stating land was to be sold in blocks. I think this is the agreement of 28.7.54. I see Ex.2. This is the agreement. I gave the land to the tenants for which they were paying rent and it was agreed when land was subdivided each tenant was to be given a block each. There has been no subdivision. I cannot remember when Willie Sing Lee's property was sold. The trouble before the agreement of 28.7.54 was that the instalment was not paid. This was because Willie Sing Lee was also mentioned in the agreement so the rent was paid direct to Warren, Leys & Kermode. The agreement is Ex.9. It mentions £25 (on page 2(7)(b)). After

10

20

30

40

Willie Sing Lee's property was sold I came to an agreement with Shahbaz Khan to deposit money in Shaheed Mohammed's office. I made three payments of £20 each to his office. I was not able to continue these payments. I saw Mr. Shahbaz Khan about it and as a result of our discussion Mr. Shahbaz Khan came to Mr. Sharma's office and gave me a letter. This letter was made in my presence and Shahbaz Khan affixed his thumbprint on it. Mr. Sharma read it over in Hindi and explained it to him in my presence and he appeared to understand the contents.

In the  
Supreme  
Court

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Defendant's  
Evidence

No. 9  
Lakshmit  
Examination  
(continued)

Q. Is this the letter.

Kermode:

I object. It purports to be a document signed by a deceased and to be witnessed by S.D.Sharma. Proper method where maker deceased is to call witness S.D.Sharma. It must be strictly proved. It also required attestation. Thumb mark affixed - no evidence could read or write English. S.387 P.C. is mandatory. The document is only witnessed "S.D.Sharma" and does not comply with S.387.

In evidence in chief of Plaintiff I was at pains to establish S.D.Sharma as late as September was in Fiji and he may still be there. Mr. Sharma should have been called or if not available his evidence to be given de bene esse. Defendant can only say "this is a document in my possession" - but to put it in as a valid document of S.Khan deceased it must be put in I submit either by Mr Sharma who purports to witness it - or by person present at time who saw it signed - but not a party. Or by a person who can identify the thumbmark. I submit it can only be marked for identification by this witness.



In the  
Supreme  
Court

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Defendant's  
Evidence

No. 9  
Lakshmijit  
Examination  
(continued)

Ramrakha:

No authority cited that lays down production of document signed by dead person. If person is dead document will be scrutinised carefully. Document has been pleaded - and Defence to it is a pure denial - not that it is a forgery or fraud.

This witness having been present and seen it signed it competent to produce it.

As to attestation as required by PC does not affect the validity of the document - nor its weight. It is valid per se. It's weight becomes a matter of evidence. Submit it is quite legitimate for this witness to produce.

10

Mr Sharma - just as open for Plaintiff to call him as for us - but I will be dealing with the whereabouts of Mr Sharma through this witness.

Mr. Kermode:

20

I refer to S.3(4) of Cap.31.

Court:

I shall hear such evidence as this witness is able to lead regarding the whereabouts of Mr Sharma before ruling on this matter.

Mr. Ramrakha:

If there was an adjournment I can obtain evidence he is out of country. I did not anticipate this objection. I thought it was common ground he was out of country.

30

Kermode:

I am not contesting he may now be out of country - but if so his evidence should have been taken de bene esse as he is the

only witness who can produce the document -  
or again his evidence could have been taken  
on commission /

In the  
Supreme  
Court

Defendant continues:

Defendant's  
Evidence

10 Mr. S.D.Sharma came to Fiji to attend  
his brother's funeral. His brother died in  
September 1970. Prior to that Mr. Sharma had  
been away for I think 3 years. Mr. Sharma is  
not practising in Fiji. I did not meet Mr.  
Sharma when he came to Suva in September but  
I spoke to Mr Ganga Prasad who is married to  
Mr Sharma's wife's sister. Mr Prasad is  
chief clerk of Grahame & Co. I made enquiries  
of him as to when Mr Sharma was leaving the  
country and he gave me a time. I believed Mr  
Sharma would remain in Fiji until my case  
was heard. I have made a search for him and  
made enquiries and understand he is out of the  
country.

No. 9  
Lakshmit  
Examination  
(continued)

20 Kermode:

I am quite prepared to say we believe he  
has gone from the country - but it does not  
affect the validity of my submissions.

Mr. Ramrakha:

I now formally tender the document.

Kermode:

I have no objection to the Court seeing  
it for the purpose of ruling.

Court adjourns for ruling.

30 Resumption

Appearances as before.

Ruling

The document in question is not a will or

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit  
Examination  
(continued)

other document of which attestation is essential before it can be produced; and the fact that S.387 P.C. provides sanctions if that section is not complied with does not, in my view, affect production. Even if S.387 P.C. did affect the position S.7 of the Evidence Ordinance Cap.31 would apply.

On the evidence of the Defendant the document is a letter made and signed (by means of a thumb print) in his presence and given to him by the person so signing. On this evidence, whether the person signing be alive or dead, the Defendant is in my view entitled to produce the letter, and I so rule. It may be produced Ex."A" as Ex. "A". 10

Sgd. Grant, J.

Defendant continued

Q. Prior to 1961 had you helped Shahbaz Khan in any way?

A. I was living with him and looking after him and collecting rents on his behalf. After Ex."A" was drawn I continued to look after him and collect his rents. I was living opposite his house on the opposite side of road - about 20 chains away. I saw Mr. Sherani at the house of Shahbaz Khan. I saw him twice. First in September 1963. I was watching from my house. The next time I saw him there was one day in 1964. On the day of the death of Shahbaz Khan I saw him in the sitting room. I was also there. I have not seen him at the house of Shahbaz Khan on any other occasion. Through Shaheed Mohammed the notice Ex.5 was given to me. I subsequently spoke to Shahbaz Khan about it. I then got another notice from Shaheed Mohammed - Ex.6. I subsequently spoke to Shahbaz Khan about it. I received a notice from Bachwan - Ex.11. I did not speak to Shahbaz Khan about it. At that time he was not alive. The other 20 30 40

10 notices I received came from Sherani & Co - Ex.12, 13 and 14. When I received the notices from Sherani & Co I consulted Solicitors in 1967 and Mr Sherani sued me in the lower Court since when I have been having litigation with Mr Sherani. I know he sued some of the tenants. I did not intervene in these cases. I did not have a Solicitor at that time. At that time I had a Solicitor acting for me in this action. I remember Mr Sherani selling some land at Waimanu Road. I tried to prevent it. Mr. Pathik was my Solicitor at the time. I instructed him to put a caveat. I don't know if he did. I only met Ram Lakhan twice. He came and had a conversation with me where I work. I did not ask a man called Sarwan to see him for me. One Butru Chanderman brought Ram Lakhan to my office and introduced me to him. I had been making investigations as to whether Shahbaz Khan had made a will in my favour. I spoke to the Chief Clerk of Mr. McNally's favour. I had not discovered any will in Mr McNally's office. When Ram Lakhan came to me he said "Shahbaz Khan has left a will in your favour which is in Mr McNally's office." I told him I asked Muni Prasad and there is no will there but if there is a will according to what you say in my favour you find it produce it, to me and have it proved and I will give you £1,000. Ram Lakhan was happy with this. I did not ask him to do anything improper like witnessing a blank will or forging a Solicitor's signature on a will or anything of that nature. I saw Ram Lakhan once again only - at my office. I never saw him on Shahbaz Khan's land known as Navitoko. I never cut logs or saw him about it or told him if Mr Sherani gave me 10 acres I would withdraw my action. I am still on the land and ask for a declaration in my favour.

In the  
Supreme  
Court

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Defendant's  
Evidence

No. 9  
Lakshmijit  
Examination  
(continued)

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit  
Examination

Cross-  
Examination  
(continued)

Q. What reason did you have to believe Shahbaz Khan might have made a will in your favour?

A. There was a telephone call from Mr. McFarlane's office and I was told something as a result I took Shahbaz Khan to Mr. McFarlane's office in my car and there was a conversation between them. Mr. McFarlane is a Solicitor.

XXM

10

In 1948 I and my Uncle Ujagir entered into an agreement with Shahbaz Khan to pay certain monies and in particular £30 every quarterly payments. I agree I never made any regular quarterly payments.

Q. From 1948 to his death you made no quarterly payments?

A. I made yearly payments until 1964.

Q. No quarterly payments.

A. There were 2 types of payments - yearly from sugar cane and the other monthly from rent received from shop in Waimanu Road.

20

Q. In 1st agreement did you carry out survey required by Clause 17?

A. No.

Q. Under 2nd Agreement 23.8.48 you were to make regular quarterly payments of £34. Did you make them.

A. No. I paid yearly from cane proceeds. It is true I did not pay according to the agreements - but according to the crop lien the money was paid in advance. There was a crop lien in

30

favour of Shahbaz Khan in respect of that land - and we were paying the money from the cane proceeds at land at Wainibokasi. There was no income from the land at Sawani.

In the  
Supreme  
Court

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Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination  
(continued)

Q. When Shahbaz Khan was alive and you entered into the agreements with him - the 4 agreements between 1948 and 1954 were properly drawn up agreements?

10 A. Yes. Drawn at Warren, Leys & Kermode Office, Solicitors for Shahbaz Khan.

Q. It was Shahbaz Khan's practice when there were agreements between you to take you to his solicitors office and have proper agreements drawn up.

A. Yes.

Q. And except for document of 1961 (Ex.A) any document was executed in that manner - drawn up of his Solicitors.

20 A. Yes - also the document of 1961 was drawn by his Solicitor

Q. In 1950 Shahbaz Khan also had Mortgages drawn up by Warren, Manro Leys?

A. Yes.

Q. Mortgages by Bhai Suchit Ganjit and by you and Ranjit and Lakshmijit?

A. Yes.

Q. And also a Bill of Sale and crop lien?

A. Yes.

30 Q. Why did deceased have those securities drawn up?

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination  
(continued)

- A. Mr Shahbaz Khan paid off the balance of the debt on the property at Waimanu Road which belonged to Bhai Suchit at that time.
- Q. The securities also secured the monies owing under 5 agreements?
- A. There were 2 different sums. One was cash money lent in advance and the other was the price of land. Willie Sing Lee was tenant of land owned by Bhai Suchit. I agree Bhai Suchit owed monies to Shahbaz Khan. 10
- Q. And the rent went towards these monies - in reduction of Bhai Suchit's debt?
- A. According to the mortgage it is true but according to the agreement all are in one.
- Q. The payment of the rent was not an agreement made by you for it to go in reduction of your debt?
- A. All the property belonged to one and all the debts were ours. Bhai Suchit is my father. 20
- Q. In October 1960 Shahbaz Khan made a demand for monies owing?
- A. Yes.
- Q. Why?
- A. I think we were defaulting in payment.
- Q. And he followed it up by the sale of your father's land under the Mortgage?
- A. Yes. 30
- Q. In November and December 1960?
- A. Yes.

	Q.	After that action did you recommence regular payments under your agreements?	In the Supreme Court
	A.	No.	<hr/>
	Q.	When did Shaheed Mohammed commence acting for Shahbaz Khan?	Defendant's Evidence
	A.	I think in 1959 or 1960. I cannot say definitely when he ceased acting for him.	No. 9 Lakshmijit
10	Q.	You stated there was friendship between your Uncle Ujagir and Shahbaz Khan?	Cross-Examination (continued)
	A.	Yes.	
	Q.	Was there not enmity between them?	
	A.	Yes later. In 1959 or 1960.	
	Q.	Ujagir Singh assaulted Shahbaz Khan by throwing acid on him?	
	A.	I don't know.	
	Q.	He was prosecuted by Police for assaulting him?	
20	A.	Yes. Something like that. It was in 1959 prior to Bhai Suchit's property being sold.	
	Q.	So at the time when you testified you made arrangements with Shahbaz Khan - there was enmity between Ujagir Singh and Shahbaz Khan?	
	A.	Yes.	
	Q.	In May 1961 what Solicitor acting for Shahbaz Khan?	
	A.	Mr. Sharma	
30	Q.	What work had you done for him to your knowledge?	



In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination  
(continued)

- A. In 1961 he made some papers regarding his income tax affairs. In 1961 or 1962 two letters were transferred by Shahbaz Khan to his defacto wife.
- Q. When was last payment made by you after your father's land was sold?
- A. I think in 1960 I cannot remember what part of the year. I cannot remember how long after the property was sold. I remember paying 3 instalments - they were not regular. There was about 30 days between each payment. Paid to Shaheed Mohammed's office. I got receipts I have the receipts. 10
- Q. Up to 24.2.61 date of last receipt Shaheed Mohammed was acting for Shahbaz Khan. Look at the receipt.
- A. Yes. I agree that is why I paid Shaheed Mohammed.
- Q. And when did Shahbaz Khan leave Shaheed Mohammed and go to Mr Sharma before 10.5.61. 20
- A. From when he left Munro, Warren, Leys he did not have regular Solicitor. He had some done by Mr Sharma some by Moti Tikaram and some by Shaheed Mohammed.
- Q. What were the circumstances leading up to preparation of Ex. "A".
- A. I could not pay my instalment regularly. The cane proceed was already sold. The Waimanu Road property was sold and there was no income from Sawani Road. 30
- Q. Until 10.5.61 was Shahbaz Khan still chasing you for payment?
- A. Not actually chasing me but the money I deposited at Shaheed Mohammed's office was not a full deposit. I paid £20 instead of £25.

Ex.20 I agree these are the receipts which I received which I now produced (by consent produced - Ex.20).

In the  
Supreme  
Court

They were payments by me of the debts under the agreements.

Defendant's  
Evidence

Q. Because Shahbaz Khan wanted you to pay off the money under the agreements?

No. 9  
Lakshmijit

A. Yes.

Cross-  
Examination  
(continued)

Q. And that was the position on 24.4.61.

10 A. Yes.

Q. Did anything happen between 24.4.61 and 10.5.61 date of Ex. "A".

A. I went and saw him personally and told him I am not in a position to keep up payments and asked him to make some provision for me to retain my land and at the same time I will look after you.

Q. What type of looking after?

20 A. He was old and could not see clearly so if he wanted to go anywhere it was my responsibility to help him out.

Q. In 1961 he was about 80 years of age?

A. Yes.

Q. Bad sight?

A. Yes.

Q. Feeble?

A. Yes.

Q. He would fall down?

A. On many occasions.

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination  
(continued)

Q. When you took him to McFarlane's office he executed power of attorney to his defacto wife?

A. No, I deny he wanted to appoint his wife his attorney --

Q. Prior to 10.5.61 what active assistance had you given Shahbaz Khan?

A. About 1949 I started living opposite him. We were on visiting terms and anything he wanted me to do I did.

10

Q. What?

A. Collect rent on his behalf. Buy his groceries. Where ever he wanted to go I took him in my car particularly about 3 times a week.

Q. Why did you do this?

A. We were on good terms.

Q. Out of friendship or as a neighbour?

A. Yes. He was also landlord.

Q. Did you expect to be paid for it?

20

A. I did not expect money nor ask for it. I did not expect to be paid for it. I did not expect any money on him but I took him in my car.

Q. Was another reason you assisted him that you owed him a lot of money?

A. It is true I owed him a lot of money. It is possible it was a reason.

Q. It was a reason?

A. Yes.

30

Q. Did Shahbaz Khan ever indicate when you

were performing these services he would pay you for these services?

In the  
Supreme  
Court

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A. Yes.

Q When was the first indication?

Defendant's  
Evidence

A. When he gave me this letter Ex. "A".

No. 9  
Lakshmijit

Q. That was the first occasion?

A. No. When I asked him to enter into some arrangement for my land and I would look after him.

Cross-  
Examination  
(continued)

10 Q. Was anything else discussed apart from your own land - was any other land discussed?

A. 2 more titles were involved in this matter.

Q. What was the arrangement you discussed with Shahbaz Khan before going to Sharma's office?

20 A. The first discussion was for him to make such arrangements as I would retain my land and payment would be made regularly.

Q. What else?

A. A new price of £12,000 was agreed for the whole of the land.

Q. What else?

A. The neighbouring 10 acres of land which was sold to Ghurhu Prasad - at the time it was sold it was not separate - and according to Ghurhu Prasad he had a tenant on it but in fact the tenant was occupying our land - and it was arranged that when the title was transferred in my name I was to give 10 acres to Ghurhu Prasad and he was supposed to pay me £100 being rent he collected from the tenant

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination  
(continued)

who in fact was occupying our land.

Q. Anything else?

A. There were 2 titles - one at Waimanu Road undivided 3 shares of Thanjit Ranjit and myself. The other title belonged to Bhai Suchit. These were to be included in the Sawani property.

Q. Anything else?

A. It was further agreed that after his death whatever I owed him was to be waived but as long as he was alive I was to pay my instalment regularly. The land was to be sold and the money was to be paid in reduction of the debt out of the sale.

10

Q. Anything else agreed on?

A. I cannot remember anything else.

Q. What about your Uncle Ujagir?

A. He was to be taken out - they were not on good terms. The new agreement was just to be with me.

20

Q. Did the £12,000 include the 2 blocks of land you and Ujagir had agreed to purchase earlier?

A. Yes.

Q. And was there anything else agreed on before the letter was signed?

A. No.

Q. At that time was a lawyer acting for you?

A. No. I used to have my documents drawn at Mr Sharma's office and Mr McFarlane's office.

30

	Q. Did you take Shahbaz Khan to Mr. Sharma's office?	In the Supreme Court
	A. Yes.	
	Q. Why not to Shaheed Mohammed's office?	Defendant's Evidence
	A. We agreed to have the agreement made at Mr Sharma's office. No one else came with us.	No. 9 Lakshmijit
	Q. Who instructed Mr Sharma.	Cross-Examination (continued)
	A. Mr Shahbaz Khan.	
10	Q. Did he convey to Mr Sharma the terms of what you had agreed as you have had agreed as you have set out in Court today?	
	A. Yes as I have said.	
	Q. So Mr. Sharma was told in your presence the price of land was £12,000.	
	A. Yes.	
	Mr. Sharma made Ex."A" himself. I was sitting in the office.	
20	Q. Was Mr. Sharma instructed that you were to continue to look after Mr. Shahbaz Khan?	
	A. Yes.	
	Q. Ex. "A" refers to C.T.7064?	
	A. Yes.	
	Q. Where did Mr Sharma get this reference?	
	A. The title was taken to Mr. Sharma's office. It was given to Mr. Sharma.	
	Q. I put it to you CT.7064 was never produced to Mr. Sharma by anybody -	

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination  
(continued)

because a new title was issued (Ex.4  
shown to Defendant).

A. I said there was a title but I can't  
remember the number.

Q. You obtained the number 7064 by a search  
you carried out yourself?

A. I made a search later through Pathik.

Q. The number 7064 came from your agreement?

A. It is possible.

Q. And at the date it did not exist?

10

A. I don't know.

Q. How did Mr. Sharma get this no. from a  
title before him.

A. I don't know.

Q. He got it from the agreement?

A. It is possible.

Q. Was there a title in front of him?

A. Yes. The title and 3 agreements were not  
uplifted from his office.

Q. Why did he refer to a part - cancelled  
title?

20

A. I cannot explain.

Q. Why does the figure of £12,000 not appear  
in Ex. "A"?

A. It must be written there. I agree I am  
a teacher and educated and speak good  
English and I could read Ex. "A" at any  
time.

	Q. Why is there no reference in it to £12,000?	In the Supreme Court
	A. I think it was in it.	-----
	Q. Did you pay any money to Shahbaz Khan at Sharma's office?	Defendant's Evidence
	A. Under the 3 agreements I deposited £50 each.	No. 9 Lakshmijit
	Q. Any receipts given?	Cross-Examination (continued)
10	A. I think Sharma gave one receipt to Govind Singh. He did not give any to me.	
	Q. Why did you not ask for a receipt?	
	A. Because I did not pay the money to Sharma but to Shahbaz Khan. The debts owing was to Shahbaz Khan.	
	Q. Ex. "A" refers to costs and disbursements of C.F.7064. What costs and disbursements?	
	A. The Government expenses.	
	Q. When was it to be transferred?	
	A. After the money was paid.	
20	Q. What about your fathers title 5425 - what transfer was to take place of that?	
	A. There was a mortgage on it  (q. repeated)	
	A. All these titles were included in one sum which was to be security for money owing.	
	Q. What transfer was there to be of your father's title?	
	A. It meant after the debt was paid in full in respect of Sawani property the costs	



In the  
Supreme  
Court

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and expenses referred to the discharge  
of mortgage and transfers of this property.

Adjourned to 2.30 p.m.

Defendant's  
Evidence

Sgd. Grant, J.

No. 9  
Lakshmijit

Resumption

Cross-  
Examination  
(continued)

Appearances as before

Defendant continued - reminded still under oath.

XXM Continued.

No Copies were made of Ex. "A".

No copy was given to Shahbaz Khan.

10

Q. As it was supposed to be an agreement  
under which you did things too, why did  
you not sign it?

A. Who ever Mr Sharma instructed to sign  
signed it.

Q. The £F150 referred to is the 3 payments  
of £F50 you paid in respect of the  
agreements?

A. Yes.

Q. A few days before this you went to Shahbaz  
Khan unable to make the payments?

20

A. Yes.

Q. Then where did you get the £F150?

A. It did not come from my pocket. It came  
from the people who paid for the land.

Q. Did you have this £F150 when you entered  
into this arrangement with Shahbaz Khan?

A. It was not with me.

	Q.	Then when was it paid?	In the Supreme Court
	A.	The people who deposited with the land paid themselves in Sharma's office. This was in respect of portion of the land I had purchased from Shahbaz Khan.	Defendant's Evidence
	Q.	And they were paid by your tenants or occupiers or yourself to Sharma?	No. 9 Lakshmijit
	A.	Yes.	Cross- Examination (continued)
	Q.	When was it paid to Shahbaz Khan?	
10	A.	It was with Mr Sharma - it was between him and Shahbaz Khan. I did not see him paid I was present when Ex. "A" was read out to Shahbaz Khan.	
	Q.	It contains an acknowledgment that Shahbaz Khan received £150 from you?	
	A.	Yes.	
	Q.	You paid no money at all?	
	A.	No.	
20	Q.	After Ex. "A" was signed what did you do regarding the agreements and the monies owing.	
	A.	I carried out the work according to the agreements. I looked for more tenants to pay off this debt, I did not make any payments to Shahbaz Khan.	
	Q.	What monies were paid indirectly in respect of the sale and purchase agreements?	
	A.	Nothing.	
30	Q.	Who was collecting rents?	
	A.	I was.	

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination  
(continued)

- Q. What did you do with them?
- A. I kept them.
- Q. Under the agreement weren't you supposed to pay them to Shahbaz Khan in reduction of your a/c?
- A. Yes. I did not do so.
- Q. From the moment you were handed Ex. "A" you did not perform that part of the agreement?
- A. Nothing so far but part of the money I have received from the tenants when they have paid the whole amount then I was supposed to pay the money to Shahbaz Khan. 10
- Q. How was Ujagir to be deleted from the other 2 agreements under Ex. "A".
- A. Ujagir's dealing with Shahbaz Khan was stopped. He was not taking any interest in this affair. I was the only one left over.
- Q. The land Navitoka CT 9410 this was the only block of land Shahbaz Khan had in that area? 20
- A. No he had other land - in the hands of one Latchman now.
- Q. What area?
- A. I think between 300 and 350 acres.
- Q. Did he have any other block of 600 acres apart from 9410?
- A. No.
- Q. This is the same land you purchased from Shahbaz Khan because you lodged 2 caveats? 30

	A. Yes.	In the Supreme Court
	Q. Between 1961 and January 1964 you paid no monies directly or indirectly?	<hr/>
	A. That is true	Defendant's Evidence
	Q. When you got Notice of Demand 9.1.64 did you go and see Shahbaz Khan?	No. 9 Lakshmijit
10	A. I had been seeing him nearly every day and when Notice was served by Bachwan. Shahbaz Khan was not in a condition I could have discussed it with him.	Cross- Examination (continued)
	Q. Did you produce to Bachwan Ex. "A"?	
	A. No.	
	Q. Why not?	
	A. I told her. The letter was in the office I never produced it to her in her lifetime.	
	I knew Faiz Mohammed who was seeking to prove will made by S.Khan. I knew he was seeking to obtain probate of a will.	
	Q. Did you produce Ex."A" to him?	
20	A. No.	
	Q. Why not?	
	A. Because he was not the owner.	
	Q. Ex."A" provided on his death he would order Executor to waive your debts?	
	A. Yes.	
	Q. As Faiz Mohammed purported to be executor of the will why did you not produce Ex. "A" to him?	
	A. Probate was not granted in his name	

In the  
Supreme  
Court

Defendant's  
Evidence

No.9  
Lakshmijit

Cross-  
Examination  
(continued)

- I did not hear that Marquardt-Gray and Co advertised for claims.
- Q. When demand made by Mr. Sherani after Shahbaz Khan's death did you produce Ex. "A" to him?
- A. No.
- Q. Why not?
- A. It was not in my possession at that time. It was in Mr Sharma's office. He sold his office and Mr McNally took over. 10
- Q. Did you direct Mr Sharma to reply to Mr Sherani and disclose this agreement?
- A. He was not here at that time. McNally was looking after the office - it was almost closed. The papers were kept under the house of Mrs. McNally. I got the document Ex. "A" in my own possession in 1967.
- Q. When Mr Sherani sold property in 1968 in which you had registered interest - why did you not then produce it to Mr Sherani? 20
- A. Mr Pathik was acting for me at that time and it was in his possession. It was with my Counsel who used it in preparation of my defence in this case.
- Q. When Mr Sherani made executor in action in which you gave evidence why not then produce it to Mr Sherani?
- A. Because action also commenced in lower Court. 30
- Q. Lower Court action commenced 5.9.67 Supreme Court probate Action ended in 1966.
- A. I think so.

I did not see or hear of any advertisements that Mr Sherani was seeking claimants.

In the  
Supreme  
Court

Q. Why did you do nothing about Ex. "A" from 1964 until 1967 when it purports to give you a large block of land?

Defendant's  
Evidence

A. This was drawn in 1961 and was kept there all the time. Shahbaz Khan died in 1964 and there were 2 claimants of his estate. Because of this trouble 2 or 3 years elapsed. I agree I knew of the trouble going on over the estate. I agree I was interested in it.

No. 9  
Lakshmiti

Cross-  
Examination  
(continued)

10

Q. Why did you never state a claim under Ex. "A".

A. I have already said there was trouble for 2 or 3 years.

Q. According to you although Shahbaz Khan sold you and Ujagir land for £12,000 by this agreement you say he gave you another over 400 acres as a gift?

20

A. Yes.

Q. Why haven't you in these proceedings made a claim for specific performance of Ex. "A"?

A. I did not know what was to be done. Solicitors were acting for me.

Q. The discussion you had with Ram Lakhan - you say you had been looking for will in your favour?

A. Yes. I had reason to believe there was one.

30 Q. At that time you had obtained Ex. "A" from McNally's home?

A. I don't think it was in my possession at that time.

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Cross-  
Examination

Q. When it came into your possession did you cause a search to be made of the papers where Ex. "A" came from.

A. Yes.

Q. Did you make enquiries of Sharma and Shaheed Mohammed to see if they had it?

A. No.

Q. Why were you prepared to pay £1000 to anyone who could find a will and have it proved.

10

A. The will which I believed was in my favour - I would have got all Shahbaz Khan's property for £1,000 or £2,000.

Q. Did you offer to pay anyone else any money?

A. No. It was only Ram Lakhan.

Q. Only Ram Lakhan?

A. I said £1,000 to be shared between Ram Lakhan and McNally because Ram Lakhan said the will was made in McNally's office.

Q. In evidence you stated prior to 1961 you were living with Shahbaz Khan?

20

A. I was there from 1949.

Q. Living with him?

A. My house is about 20 chains away from his house.

Q. Why did you say living with him. Did you at any time live in his house?

A. No.

Q. Why did you say "I was living with him"?

A. I misunderstood.

30

Re'ex :-

Q. When you paid monies to Shaheed Mohammed you said you paid short. What did you mean?

A. The instalment was reduced to £25 and I was only paying £20. I paid only £20 on 3 occasions.

Sgd. Grant J.

In the  
Supreme  
Court

Defendant's  
Evidence

No. 9  
Lakshmijit

Re-Examination

No. 10

BUTURU CHANDERMAN

BUTURU CHANDERMAN s/o Deo Nandan

Sworn in Hindi.

I live at Nausori at present and unemployed. I am a retired Motor Mechanic I know Ram Lakhan - bailiff very well. I know the defendant.

Q. Did you do anything in connection with Ram Lakhan and Defendant?

A. Yes. About 3 or 4 years ago. I met Ram Lakhan at Marina Service Station Walu Bay, Suva. He made a request so I took him to Cummon Street to the Defendant. I spoke to the Defendant and Ram Lakhan. After I had introduced them I went away.

XXM:  
Nil.

Sgd. Grant, J.

Close of Defence.

Defendant's  
Evidence

No. 10  
Buturu  
Chanderman

Examination  
(continued)

10

20



Ramrakha:

1. Whether barred by Statute of Limitation.

Chitty's Statutes 6th Edtn. Vol.7 p.617.

If any money claim or demand by Plaintiff it would become extinguished in 6 years time - under S.3 of L.A. 1623.

Shaheed Mohammed first gave Notice Ex."5" on 17.9.60. Under it it makes the monies immediately payable. It meant unless something happened in the meantime the whole of the monies would become irrecoverable in October or September 1966 depending on how you read the notice. The rescission of the contract is purported to be made by 17.10.60 but the Notice is inchoate - "intend to apply to Registrar".

10

The right to rescind arose on 17th September or October - 6 years later - in 1966. The right to rescind had not been exercised by Plaintiff - indeed he could not do so as Probate not granted until 5.1.67. Time cannot stop running.

20

When Plaintiff wrote his notices Ex.13 and Ex.14 - the time to rescind had already been barred by operation of limitations. They had slept on their rights for more than 6 years.

Bachwan's Notice Ex.11 is merely a demand with a threat to rescind. It is not a rescission.

30

Submit the right to rescind has been lost.

As to right to recover the monies - Plaintiff pleads last payment received on

a/c was on 31.1.60 (para 3 of Statement of Claim - paras 2 and 3). If you take Plaintiff's pleaded figures - 6 years later - December 1966 and 31st January 1966 - the right to recover the monies had been lost because Ex.5 destroyed the right to pay by instalments. So when Mr Sherani wrote demanding payment the debt was statute - barred.

In the  
Supreme  
Court

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No. 11  
Addresses  
of Counsel  
(continued)

10. The fact 3 payments made by Defendant to Shaheed Mohammed or that he paid £150 on a/c of the debt does not mean the right to recover was revived.

Writ issued 23.10.67 - well after 6 years. No right to recover monies lost.

- 20 If Plaintiff lost right to rescission and right to recover the monies his claim must fail. As to facts for Defendant's view point central issue is whether Ex. "A" was executed by Shahbaz Khan. Defence merely pleads a denial to this. It does not plead it is a forgery or that Shahbaz Khan's thumb-print is on it. No effort made to prove the discernible thumbprint is a forgery.

If this variation took place showing consideration partly past and partly present and future and it must bind the Plaintiff.

- 30 Much made of the £12,000 not being mentioned in it. Ex. "A" concerned with position when Shahbaz Khan died - all the balance to be waived.

Submit Defendant should be believed on this. Unfortunate Mr S.D.Sharma not called. Submit Defendant gave evidence with considerable amount of circumstantiality. Ram Lakhani's evidence very suspicious - does not establish any prior bond of trust or friendship between himself. It sounds too casual to be true. Submit it is fabricated. He does not report to Police.

In the  
Supreme  
Court

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No.11  
Addresses  
of Counsel  
(continued)

Defendant's story is corroborated by  
Chanderman who was not XXmd.

If you find Ex. "A" was made by deceased  
it should be read as a whole. He was still  
doing some services. Collecting rent etc.  
and giving consideration back. If Ex. "A"  
was left with Sharma quite legitimate to put  
acknowledgment of £150 as it would come from  
Sharma's a/c. Submit this document is a waiver  
on Shahbaz Khan's account. The present  
Plaintiff advances reasons for delay. He could  
have applied administrator pendente lite.

10

If you do find there was default submit  
you can give relief v forfeiture.

Volume 14 3rd Edition p.623 Halsbury,  
para 1152. ".... of a penalty".

Submit looking at Ex. "1" - Clause 20  
reads (read). This is in the nature of a  
penalty - and demonstrated by Plaintiff's  
evidence himself. A heartless situation.

20

In Ex. "8" - Clause 22 also in nature of  
penalty - and submit Court should give relief.  
Nothing to indicate it was an absolute bargain  
to Defendant. Having regard to all the  
securities he had I seek relief by the payment  
of the balance without interest and the cost of  
these proceedings.

Pleadings plead a) Agreements b) defaults  
c) notices of rescission. I submit this does  
not show a cause of action. The forfeiture  
clauses say he may enforce his contract which  
he is not doing - or "may" forfeit the monies  
re-enter and resell. Submit this is not an  
option. The pleadings are inchoate. Don't  
even plead forfeiture clauses or show what he's  
done under them.

30

Under Clause 9 of Statement of Claim  
requires payment. Under Clause 11 determining.  
He wants to have his cake and eat it. Don't

disclose basis on which you can say "I rescind this contract."

In the  
Supreme  
Court

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I ask that Plaintiff's case be dismissed for these reasons.

No. 11  
Addresses  
of Counsel  
(continued)

Kermode:

10 Statute of Limitations not applicable - not seeking to recover a sum of money. In September 1952 there was a formal deed entered into where all a/cs taken and balance of monies shown Ex. "9". There is acknowledgment by deed that money owing. Debts were collaterally secured by mortgage and bill of sale. For a mortgage the time is 12 years.

20 2nd Edition of Halsbury, Volume 20 page 602 para 756. Rights under these agreements and incorporated in deed of 24.9.52 entitles creditor to take various courses of action - including re-entry which he has done. As from date of determination. Defendant was a trespasser - as from 1964 when Mr Sherani gave notice terminating the agreement. Admitted and proved there has been default - agreements terminated. No counter-claim that rescission was unoperative or illegal - except to claim relief v forfeiture. They accept forfeiture but claim relief.

30 No sense of forfeiture here as in case of a lease. The agreements provide time was of the essence - and defendant's story as to what he didn't do even when he claims to have obtained gift of over 400 acres of land - he did not pay a penny or hand over the rents. Done nothing to indicate the Court should give him relief. Although Ex. "A" was pleaded defendant did not in his counter-claim endeavour to set up it was a binding agreement. He does not seek specific performance or declaration it is valid. They now simply ask to pay balance of monies free of interest.  
40 This clearly destroys the validity of Ex. "A" as an agreement.

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Supreme  
Court

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No. 11  
Addresses  
of Counsel  
(continued)

If the defendant can establish it is a valid agreement it must be established by a separate action. If it has any validity it is outside the purview of this case. We are concerned with whether there has been a lawful rescission.

If the letter Ex. "A" has any bearing - is it a legal document. The first recital is in nature of a testamentary disposition - if it is it must be properly witnessed - and is not. 10

What document the 1st paragraph convey. It is merely an authority to Executor. It is not a direction or assignment or gift.

The deceased himself by a subsequent will has clearly gone against the terms of that letter and as a result the property is vested in the Plaintiff's as Administrator.

What is the consideration - "for past several years." This is past consideration Cheshire & Fifood 4th Edition p.61. Dampleigh v. 20 Brathwait 1615 Hob. 105. On this alone it is not enforceable.

As to gift of over 400 acres of land - must be by deed if no consideration.

As to facts relating to Ex. "A" - give rise to grave suspicion. More is required from Defendant to establish it. What it contains bears very little resemblance to what he says was agreed. And from 1961 until 1967 at no time does he produce Ex. "A". And yet he is still today asking relief showing money still owing under the agreements. 30

Submit Plaintiff has proved his case and Defendant's evidence regarding Ex. "A" - which is his only hope - quite apart from the legalities of the document - his evidence of the signing of the document by Shahbaz Khan cannot be believed.

Kermode in reply to Court:

Asking for order for possession of land which was sold and injunction restraining him from going into surrounding land and an injunction to restrain him from removing any buildings fences or other improvements.

I agree no evidence led as to threatened or apprehended activities of this type. And no evidence led as to damages.

10 Judgment reserved.

Sgd. Grant.J.

In the  
Supreme  
Court

\_\_\_\_\_  
No.11  
Addresses  
of Counsel  
(continued)

No. 12

JUDGMENT

No.12  
Judgment  
5th November  
1970

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 219 of 1967

Between:

FAIZ MOHAMMED KHAN SHERANI  
s/o Din Mohammed Khan Sherani  
Plaintiff

- and -

LAKSHMIJIT s/o  
Bhai Suchit Defendant

20

Mr. Kermode for the Plaintiff.  
Mr. K.C.Ramrakha for the Defendant.

JUDGMENT

There is some confusion on the record as to who the Plaintiff is suing. The writ of summons was issued against Lakshmijit

In the  
Supreme  
Court

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No.12  
Judgment  
5th November  
1970  
(continued)

s/o Bhai Suchit as the first Defendant, and the Administrator of the Estate of Ujagir s/o Raj Kumar deceased as the second Defendant. An appearance was then entered for the first Defendant only by Grahame & Co., Solicitors. Subsequently notice was given by Mr. D.Pathik Solicitor, of change of solicitor on behalf of the first Defendant. Thereafter, on the 16th February 1968, the solicitors for the Plaintiff gave Notice of Discontinuance of action against the second Defendant. 10  
Subsequent to this an amended statement of claim was filed in which the second Defendant was still named by the Plaintiff as a party to the action. Thereafter a further notice of change of solicitors was filed, in which Messrs. Ramrakhas stated that they had been appointed to act as the solicitors of "the above named Defendants" (in the plural).

By paragraph 6 of the Amended Defence, paragraph 4 of the Amended Statement of Claim is denied and there is no evidence before the Court that the first named Defendant is also the second named Defendant. 20

In view of the notice of discontinuance of action against the second Defendant, I hold that the Plaintiff's action is against the first Defendant only, hereinafter referred to as "the Defendant".

The documentary and oral evidence satisfy me that and I find as a fact that : 30

(1) On the 16th February 1948, a Memorandum of Agreement (Exhibit 1) was entered into between Shahbaz Khan as Vendor and the Defendant and one Ujagir s/o Raj Kumar (hereinafter referred to as "Ujagir") as Purchaser, providing for the sale of 72 acres known as "Navitoka" being part of Title 7064, and providing inter alia for possession on the 1st February 1948, for payment of the balance of purchase monies to be 40

made by quarterly instalments, for time to be of the essence of the contract, and on default of payment for rescission of the contract by the Vendor (there being no requirement as to giving of notice before the Vendor exercises his rights) for any monies paid to be forfeited as liquidated damages and for the Vendor to re-enter and take possession of the land.

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(continued)

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- (2) On the 23rd August, 1948, a Memorandum of Agreement (Exhibit 8) was entered into between Shahbaz Khan as Vendor and the Defendant and Ujagir as Purchaser, providing for the sale of 138½ acres known as "Navitoka" being part of Title 7319, and providing inter alia for possession on the 23rd August, 1948, for payment of the balance of purchase monies to be made by quarterly instalments, for time to be of the essence of the contract, that any default thereunder shall be deemed to be a default under Exhibit 1 and vice versa, and on default of payment for rescission of the contract by the Vendor (there being no requirement as to giving of notice before the Vendor exercises his rights) for any monies paid to be forfeited as liquidated damages and for the Vendor to re-enter and take possession of the land.

20

30

- (3) On the 24th September, 1952 a Deed (Exhibit 9) was entered into between the Defendant and Ujagir and others of the one part and Shahbaz Khan of the other part which recited inter alia default on the part of the Defendant and Ujagir of instalments of purchase money under Exhibits 1 and 8, acknowledging inter alia the monies then owing to Shahbaz Khan under Exhibits 1 and 8 providing that in consideration of certain additional security given Shahbaz Khan would, inter alia, not take

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(continued)

any steps to enforce payment of the monies due for one month nor charge any interest in respect of Exhibit 1 until after the 31st December 1954, and providing that except as aforesaid the rights powers and remedies of Shahbaz Khan under Exhibits 1 and 8 were in no way affected.

- (4) On the 28th July 1954 an Agreement (Exhibit 2) supplemental to a Sale Agreement of the 23rd October 1948 (which was not produced) relating to land fronting Princes Road was entered into between Shahbaz Khan of the one part and the Defendant and Ujagir of the other part which recited the desire of the Defendant and Ujagir to sub-divide and sell the land and providing inter alia that on sale certain of the monies were to be applied by Shahbaz Khan to monies owing by the Defendant and Ujagir under the sale agreement of the 23rd October 1948 and under Exhibit 1, and that the rights powers and remedies of Shahbaz Khan under Exhibit 1 were in no way affected. 10 20
- (5) On the 12th April 1957 Certificate of Title No. 9410 (Exhibit 4) was registered in the name of Shahbaz Khan relating to a piece of land known as "Navitoka" (part of) and containing 664 acres 1 rood and 30 perches; and it is admitted by virtue of paragraphs 3 and 4 of the Amended Defence and by the Defendant under cross-examination that the lands comprised in Exhibits 1 and 8 are included in this title. 30
- (6) On the 17th September 1960 a Notice (of which Exhibit 5 is a copy) signed by Shahbaz Khan and addressed to the Defendant and Ujagir and others was drawn up, giving notice inter alia that default having been made in repayment of instalments of purchase money due under Exhibits 1 and 8, unless payment was made within one month 40

of the date of service of the notice of the monies detailed in a first and second schedule annexed to the notice, Shahbaz Khan would proceed to exercise the rights powers and remedies conferred on him by Exhibits 1 and 8; and such notice was duly served.

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- 10 (7) On the 17th October 1960 a Notice (of which Exhibit 6 is a copy) signed by Shahbaz Khan and addressed to the Defendant and Ujagir and others was drawn up giving notice that, pursuant to Exhibit 5, default having been made in the payment of the monies due, Shahbaz Khan intended forthwith to apply to the Registrar General for a foreclosure order; and such notice was duly served.

20 The giving of this notice in no way debarred Shahbaz Khan from exercising any of the other rights reserved to him in Exhibits 1 and 8.

- 30 (8) On the 9th January 1964 a Notice (of which Exhibit 11 is a copy) was drawn up, signed by one Bachwan (the defacto wife of Shahbaz Khan) as attorney for Shahbaz Khan, addressed to the Defendant and Ujagir and others and served on the 2nd April 1964 giving notice inter alia that default having been made by the Defendant and Ujagir in the payment of instalments of purchase monies due under Exhibits 1 and 8, unless payment was made within one month of the date of service of the notice of the monies detailed in a first and second schedule annexed to the notice, Shahbaz Khan would proceed to exercise the rights, powers and remedies conferred on him by Exhibits 1 and 8.

- 40 (9) On the 27th September, 1963, Shahbaz Khan executed a will (a copy of which is annexed to Exhibit 10) leaving all his property to his wife Bachwan for life,

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(continued)

and thereafter the residue and remainder of his estate to such of his relations as should be advised by his solicitors, Messrs. Sherani & Co., after they had made full and proper enquiries and investigations.

- (10) On the 29th May 1964 Shahbaz Khan died, the death certificate (Exhibit 3) giving the cause of death as senility, after an illness of about 8 months' duration. 10
- (11) In October 1964 Bachwan, the de facto wife of the late Shahbaz Khan, died.
- (12) On 5th January 1967 letter of administration with the will annexed of the estate of the late Shahbaz Khan were granted to the Plaintiff (Exhibit 10).
- (13) On the 2nd March 1967 a Notice (of which Exhibit 12 is a copy) from the Plaintiff as administrator and addressed to the Defendant and Ujagir and others was served on the Defendant, giving notice inter alia that default having been made by the Defendant and Ujagir in the payment of instalments of purchase monies due under Exhibits 1 and 8, unless payment was made within one month of the date of service of the notice of the monies detailed in a first and second schedule annexed to the notice, the Plaintiff would proceed to exercise the rights, powers and remedies conferred on him by Exhibits 1 and 8. 20 30
- (14) By letter of even date to Exhibit 12 (of which Exhibit 13 is a copy) sent from the Plaintiff to the Defendant and Ujagir, notice was given that, unless the arrears of money due were paid within 30 days, Exhibits 1 and 8 were cancelled and rescinded and requiring the Defendant and Ujagir to thereupon deliver vacant possession, failing which an action for ejectment would be instituted. 40

Thus on the 2nd April 1967 at the latest, the arrears not having been paid, the Plaintiff was entitled, subject to there being no bar, to exercise the rights powers and remedies conferred on him by Exhibits 1 and 8.

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10 (15) On the 3rd April 1967 a letter (of which Exhibit 14 is a copy) was sent from the Plaintiff, addressed to "The Administrator of the Estate of Ujagir" and the Defendant giving notice that, as the debts in question had not been paid, Exhibits 1 and 8 were determined and all monies paid forfeited to the administrator of the estate of the late Shahbaz Khan.

20 (16) On the 6th February 1968 a Caveat (of which Exhibit 7 is a copy) was registered in the name of the Defendant against Title No. 9410 (Exhibit 4), the Defendant claiming an interest in the land comprised in that title by virtue of Exhibits 1, 8, 9 and 2, and by virtue of a letter dated 10th May 1961.

30 As to the letter dated 10th May 1961 referred to in the Caveat, the Defendant in evidence produced a typewritten letter (Exhibit A) so dated and addressed to him which he claimed was made in his presence and signed with the thumb print of Shahbaz Khan, the letter having been read over to Shahbaz Khan in Hindustani and explained to him by a solicitor, Mr. S.D.Sharma, who was not called as a witness. The letter reads in typescript:

"Dear Sir,

40 I Shahbaz Khan (f/n Ado Khan) Landlord, Navitoka, Sawani, Naitasiri, wish to place on record that IN CONSIDERATION of your free services rendered to me for past several years, I confirm and rectify that upon my death I authorise my EXECUTOR or EXECUTORS ADMINISTRATOR or

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ADMINISTRATORS to waive aside the balance of all principal and interests due to me on account of the sale price of my land to you vide the Sale and Purchase Agreements.

It is to be noted that the remainder of C.T. 7064 is to be included in this sale price and that Ujagir, f/n Raj Kumar is to be deleted from this deal as from this date.

10

You are to continue collecting the rents of this land and pay to me this amount which I shall credit to your account.

Providing Ghurau Prasad pay a further sum of £100.0.0. being compensation for land he let out to Shiv Prasad, f/n Bikram Chaudhary, you shall allow Ghurau Prasad to have 10 acres of land from C.T. 7064 according to the boundaries defined by me.

20

All costs of transfer and disbursements of C.T.7064, C.T.5349 and C.T.5425 to be borne by you. I acknowledge receipt of £150.0.0. from you.

Yours faithfully,

Shahbaz Khan".

Exhibit A is not a Will (nor properly executed as such) nor a deed (as would be required to vest land as a gift) nor a contract under seal. The consideration expressed therein is past and not executed, the services of the Defendant not having been performed in the way of business and the type of services rendered and the circumstances attendant thereon raising no implication whatsoever that they were to be paid for (Lampleigh v. Brathwait (1616) Hob.105; Re Casey's Patents (1892) 1 Ch. 104). It has no legal effect and I so hold.

30

10 Although not expressly pleaded, if the Defendant is relying on the High Trees principle (which he may be if Paragraph 5(b) of the Amended Defence and the Counter-claim are read together), the Defendant, in the absence of evidence from a vital witness Mr. S.D.Sharma (who was in Fiji in September 1970 the month preceding the hearing of this action), and upon a consideration of the contents of the subsequent will of the late Shahbaz Khan, and in view of the conduct of the late Shahbaz Khan and the conduct of the Defendant being utterly inconsistent with and incompatible with the contents of Exhibit A, has failed to satisfy me of the authenticity of Exhibit A. Consequently the applicability or otherwise of the High Trees principle does not fall to be considered.

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20 As to the monies forfeited by the Plaintiff as liquidated damages, there is authority for the Court in its equitable jurisdiction to relieve against forfeiture of instalments even after rescission if in the actual circumstances of the case it would be oppressive and unconscionable for the Vendor to retain all the instalments (Chitty on Contracts, 23rd Edition, Vol. 1 p.1498 para 1501); but in view of the fact that the Defendant has had the use and benefit of the land in question or part thereof for a very considerable period, and in view of the judgment hereunder, the circumstances do not warrant such relief.

40 The Defendant has by paragraph 15 of his Amended Defence expressly pleaded the Statute of Limitations applicable in Fiji. The statute of limitation applicable in Fiji to actions for the recovery of land is the Real Property Limitation Act 1874 (Imperial) 37 and 38 Victoria Cap.57. This Act is in force here by virtue of the Statute of Limitations Declaration Ordinance Cap.137 Laws of Fiji 1955. Under the Revised Edition of the Laws Ordinance 1965 (Section 5(i) and the first schedule) the Statute of Limitations Declaration Ordinance Cap.137 was omitted from the revised edition of the laws of Fiji provided that the

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Ordinance should remain in force until the same should have been expressly repealed or should have expired, become spent or had its effect, which it has not.

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By virtue of the Real Property Limitation Act 1874 no person can bring an action to recover any land except within 12 years next after the time at which the right to bring such action has first accrued to some person through whom he claims; and an administrator claiming an estate or interest is deemed to claim as if there had been no interval of time between the death and the grant of the letters of administration.

10

Where the person claiming the land or the person through whom he claims has become entitled by reason of any forfeiture or breach of condition the right is deemed to have first accrued when the forfeiture occurred or the condition broken.

20

It was elicited from the Defendant under cross-examination that the Defendant had never made regular quarterly payments as contracted for in Exhibits 1 and 8, that from 1948 to the death of Shahbaz Khan the Defendant had made no quarterly payments (and further, that he had always been in breach of clause 17 of Exhibit 1), and this is common ground.

There is no evidence before the Court of any written acknowledgment of the title of the late Shahbaz Khan signed by the Defendant having been given by the Defendant to the late Shahbaz Khan or his agent, affecting the period of limitation after the execution of Exhibit 9 in respect of the title to the land comprised in Exhibit 8, or after the execution of Exhibit 2 in respect of the title to the land comprised in Exhibit 1.

30

Under Paragraph (a) of Clause 7 of Exhibit 9 the late Shahbaz Khan agreed not to take any steps to enforce payment of any of

40

the monies payable to him under Exhibit 1 and 8 for a period of one month from the date thereof (viz. 1 month from the 24th September 1952) and Clause 9 of Exhibit 9 expressly declared that, except as provided in Paragraph (a) of Clause 7, nothing in Exhibit 9 should be deemed to prejudice or affect in any way whatsoever the rights powers and remedies of the late Shahbaz Khan under Exhibits 1 and 8.

In the  
Supreme  
Court

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No.12  
Judgment  
5th November  
1970  
(continued)

10            Clause 5 of Exhibit 2 expressly declared that nothing in Exhibit 2 should be deemed a waiver of or in any way to prejudice the rights powers and remedies of the late Shahbaz Khan under Exhibit 1.

20            It has been established that the Defendant was in breach of condition as he did not pay the quarterly instalments contracted for under Clause 1(b) of Exhibit 1, and Clause 20 thereof provides inter alia that if at any time two of the quarterly instalments shall be in arrears and unpaid for more than 7 days after the due date of the second of such overdue instalments or default be made in the performance or observance of any other stipulation for 21 days (which includes a breach of Clause 17) then the late Shahbaz Khan may rescind Exhibit 1 and re-enter and take possession of the land.

30            It has also been established that the Defendant was in breach of condition as he did not pay the quarterly instalments contracted for under Clause 1(b) of Exhibit 8, and Clause 22 thereof provides inter alia that if any of the instalments shall be in arrears and unpaid for more than 21 days after the due date then the late Shahbaz Khan may rescind Exhibit 8 and re-enter and take possession of the land.

40            Thus, at the latest, taking into account the effect of Paragraph (a) of Clause 7 of Exhibit 9, the late Shahbaz Khan was, one month after the execution of Exhibit 9, that



In the  
Supreme  
Court

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No.12  
Judgment  
5th November  
1970  
(continued)

is to say on the 25th October 1952, entitled to rescind Exhibit 8, re-enter on the land comprised therein and take possession of same - and it is from that date that the right to bring an action for the recovery of that land first accrued; and the late Shahbaz Khan was, immediately after the execution of Exhibit 2, that is to say on the 29th July, 1954, entitled to rescind Exhibit 1, re-enter on the land comprised therein and take possession of same - 10 and it is from that date that the right to bring an action for the recovery of that land first accrued.

The action before the Court commenced by writ of summons on the 23rd October 1967, 15 years after the cause of action arose in respect of the land comprised in Exhibit 8 and more than 13 years after the cause of action arose in respect of the land comprised in Exhibit 1, and a prayer for possession of the said land was 20 not entered until the 19th October 1970. It follows that the Plaintiff's action for possession for the said land is statute barred, and I so hold.

In these circumstances the Plaintiff's prayer for a declaration and his claim for mesne profit must fail accordingly.

As to the Plaintiff's prayer for an injunction, subject to certain exceptions which do not apply in this case, proceedings in equity 30 are limited to the same period as actions at law.

As learned Counsel for the Plaintiff conceded, no evidence as to damages was led.

The Plaintiff's action is accordingly dismissed with costs in favour of the Defendant.

As to the Defendant's Counterclaim, as the Defendant has succeeded on paragraph 15 of his Amended Defence, and as the Counterclaim by virtue of Paragraph 16 thereof only falls to be

considered if there was default in law on the part of the Defendant in respect of which the Plaintiff was entitled to recover, it is dismissed with costs in favour of the Plaintiff.

In the  
Supreme  
Court

Sgd. C.H. Grant.  
Acting Puisne Judge

No.12  
Judgment  
5th November  
1970  
(continued)

SUVA,  
5th November 1970.

No.13

No.13  
Order  
5th November  
1970

10

ORDER

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No.219 of 1967

BETWEEN: FAIZ MOHAMMED KHAN SHERANI  
s/o Din Mohammed Khan Sherani  
of Suva, Administrator of the  
Estate of Shahbaz Khan, deceased  
Plaintiff

and

20

LAKSHMIJIT s/o Bhai Suchit  
of Sawani  
Defendant

O R D E R

DATED AND ENTERED THE 5TH DAY OF  
NOVEMBER 1970

This action having been tried on the 19th and 20th days of October 1970 before the Honourable Mr Justice Clifford H. Grant, Acting Puisne Judge of the Supreme Court of Fiji, at Suva,

In the  
Supreme  
Court

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No.13  
Order  
5th November  
1970  
(continued)

without a jury, and the said Mr Justice Clifford H. Grant on the 5th day of November 1970 ORDERED that the Plaintiff's action be dismissed with costs in favour of the Defendant AND FURTHER ORDERED that the Defendant's counterclaim be dismissed with costs in favour of the Plaintiff.

IT IS ADJUDGED that the Plaintiff's action be and is hereby dismissed and the Plaintiff do pay the Defendant his costs of action to be taxed and the Defendant's counterclaim be and is hereby dismissed and the Defendant do pay the Plaintiff's costs on the Defendant's counterclaim.

10

BY THE COURT

LS.

Sgd. S. Deo  
DEPUTY REGISTRAR

No. 14  
GROUNDS OF APPEAL

In the  
Court of  
Appeal

IN THE FIJI COURT OF APPEAL

Civil Appeal No.35 of 1970

Supreme Court Civil Action No.219/67

No.14  
Grounds of  
Appeal  
26th  
November  
1970

BETWEEN: FAIZ MOHAMMED KHAN SHERANI  
s/o Din Mohammed Khan Sherani  
of Suva Administrator of the  
Estate of Shahbaz Khan, deceased.

10

Appellant

and

LAKSEMIJIT s/o Bhai Suchit of  
Sawani, Clerk

Respondent

GROUNDS OF APPEAL

20

TAKE NOTICE that the Court will be moved at the expiration of 14 days from the service upon you of this Notice, or so soon thereafter as Counsel can be heard for the above-named Appellant, for an Order, that the whole of the judgment herein of the Honourable Mr. Justice Clifford H. Grant, given on the trial of this action on the 5th day of November, 1970 whereby it was adjudged, inter alia, that the Respondent should have judgment against the Appellant, be set aside or varied, and that judgment may be entered in the said action for the Appellant against the Respondent with costs.

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AND for an order that the costs of this Appeal be paid by the Respondent to the Appellant and for such further or other order as the Court of Appeal shall seem just.

In the  
Court of  
Appeal

\_\_\_\_\_

No.14  
Grounds of  
Appeal  
26th  
November  
1970  
(continued)

AND FURTHER TAKE NOTICE that the grounds  
of Appeal are :-

1. The learned trial Judge erred in Law in holding that the Plaintiff's claim was statute barred by virtue of the provisions of the Real Property Limitation Act 1874 (Imperial) 37 and 38 Victoria Cap.57 or any other such statute
2. Even if the Real Property Limitation Act 1874 (Imperial) 37 and 38 Victoria Cap.57 10 did apply there was ample evidence that the Respondent had admitted and acknowledged the title of Shahbaz Khan deceased during the period of Limitations and the learned trial Judge misdirected himself in directing himself to the contrary.
3. The learned trial Judge wrongly rejected the evidence tendered on behalf of the Appellant, firstly, with respect to a Will allegedly executed by Shahbaz Khan in 20 favour of Respondent; and, secondly, with respect to the Paper Writings in connection with the above Will.
4. The verdict is unreasonable and cannot be supported having regard to the weight of the evidence adduced.

PRESENTED this 26th day of November, 1970

Sgd. R.G.Kermode  
Counsel for the Appellant.

To the above-named Respondent and/or to his 30  
Solicitors Messrs. Ramrakhas of 77 Marks Street,  
Suva.

No. 15 (a)  
JUDGMENT OF GOULD V.P.

In the  
Court of  
Appeal

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 35 of 1970

Between: FAIZ MOHAMMED KHAN SHERANI  
as Administrator of the  
Estate of Shahbaz Khan, deceased.

No.15(a)  
Judgment  
of Gould  
V.P.  
15th July  
1971

10 Appellant  
(Original Plaintiff)  
and

LAKSHMIJIT s/o Bai Suchit  
Respondent  
(Original Defendant)

Hearing: 23rd April 1971.

Judgment: 15th July 1971.

Mr. R.G.Kermode for the appellant,  
Mr. K.C.Ramrakha for the respondent.

JUDGMENT OF GOULD V.P.

20 I have had the advantage of reading the  
judgment of Richmond J.A. in this difficult  
case and am in full agreement with his  
reasoning and conclusions. I propose to add  
only a brief word.

30 The crux of the matter is that the parties  
have chosen so to word their contract that  
there is no automatic right of re-entry on  
breach of a condition. The exercise of the  
right to rescind has been made a condition  
precedent to entitlement to possession and it  
is a meaningful right. What then, was the  
position in relation to the Real Property

In the  
Court of  
Appeal

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No.15 (a)  
Judgment  
of Gould  
V.P.  
15th July  
1971  
(continued)

Limitation Acts of 1833 and 1874 (Imperial) immediately after the breach of the condition for prompt payment of instalments? Section 3 of the 1833 Act contains the words, "and when the person claiming.....shall have become entitled by reason of any.....breach of condition...". The breach of condition must therefore be such as to entitled the claimant to the possession of the land. In the present case it did not have that effect; it entitled the appellant only to rescind, if he thought fit, whereupon he would acquire the right to possession. But I think he would acquire that right either in his capacity as owner of the land untrammelled by any contract, or pursuant to terms of the contract which came into effect upon and therefore survived rescission. At no time prior to the determination of the contract could the vendor have claimed possession of the land by reason of a breach of condition.

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Even if it could be said that, by reason of the rescission, the prior breach of condition had expanded into something which entitled the appellant to possession, I would not think that the words of section 3, "deemed to have first accrued when....such condition was broken", could be called in aid to antedate that effect to the date of the original breach. It is true that in Barrett v. Richardson and Cresswall [1930] 1 K.B. 686, Lord Wright said -

"The words 'first accrued' in my opinion, are merely inserted to show the absolute identity in time between the right relied on as justifying the forfeiture and the commencement of the statutory period." In my judgment, however, the "right relied on" must be an effective right entitling the claimant to immediate possession, and the word "deemed" in the section, can never have been intended, by some sort of retroactive effect, to convert an inchoate or imperfect right into a complete or perfect one.

30

40

I should perhaps add that in my consideration of the matter in issue I have been mindful

of the principle that, in a question of limitation, the merits of the parties are not relevant.

In the Court of Appeal

10 All members of the Court being of the same opinion, the appeal is allowed with the consequences proposed in the judgment of Richmond J.A. We would add that in arriving at our conclusion we have been greatly assisted by the careful and painstaking judgment of the learned judge in the Supreme Court, before whom the issue of limitation was not comprehensively argued.

No.15 (a)  
Judgment  
of Gould  
V.P.  
15th July  
1971  
(continued)

Sgd. J. GOULD  
Vice-President

15th July 1971

No. 15 (b)

JUDGMENT OF RICHMOND J.A.

No.15 (b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

20 Civil Appeal No. 35 of 1970

Between: PAIZ MOHAMMED KHAN SHERANI  
as Administrator of the Estate  
of Shahbaz Khan, deceased.  
Appellant  
(Original Plaintiff)  
- and -

LAKSHMIJIT s/o Bhai Suchit  
Respondent  
(Original Defendant)

30 Hearing: 23 April 1971  
Judgment: 15th July 1971



In the  
Court of  
Appeal

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Mr. R.G.Kermode for the appellant  
Mr. K.C. Ramrakha for the respondent

Richmond J.A.            JUDGMENT

No. 15(b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971

I have been asked by the Vice-President to deliver the first judgment.

This is an appeal from a judgment of the Supreme Court in a civil action brought by the appellant (as original plaintiff) against the respondent (as original defendant) wherein the appellant claimed possession of two areas of land comprising in all approximately 210 acres and situated in Sawani in the district of Rewa in the Island of Vitilevu. The learned trial Judge, after finding in the appellant's favour on certain matters which are not now in issue, dismissed the action on the grounds that any rights which the appellant might otherwise have had to recover possession of the land had been extinguished by the Statutes of Limitation in force in Fiji. It is against that decision that the appellant now appeals to this Court.

10

20

The relevant facts are set out in considerable detail in the judgment appealed from and there is no need for me to repeat them at length. So far as it is relevant to the present appeal the brief history of the matter is as follows.

In the year 1948 one Shahbaz Khan was the owner of some 664 acres in Sawani. By an agreement in writing dated 16 February 1948 he agreed to sell 72 acres of this land to the respondent and one Ujagir at a price of £80 per acre (subject to survey). This agreement, after providing for payment of a small deposit, made provision for the estimated balance of the purchase price (£5,640) to be paid by quarterly instalments of £30 each, the first such instalment falling due on 1 August 1948. This meant that if the agreement had been carried out in accordance with its terms it would have

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10 taken some 47 years to pay the full purchase price. By a further agreement dated 23 August 1948 Shahbaz Khan agreed to sell to the respondent and Ujagir a further 138 $\frac{1}{2}$  acres at a price of £50 per acre. This agreement also provided for payment of a small deposit and then provided that the balance of the estimated purchase price (£6,752) should be paid by equal quarterly instalments of £32 each, the first such instalment falling due on 31 August 1950. In this case, therefore, it would have taken approximately 52 years for the full purchase price to be paid.

In the  
Court of  
Appeal

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No. 15(b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

20 I shall not refer in detail to all the provisions of these two agreements which were substantially similar. In both cases provision was made for the purchasers to be let into immediate possession and the vendor undertook to give a transfer of title on payment of the whole of the purchase price. No interest was payable unless default was made in which event the Vendor could charge interest in the one case at £5 per centum per annum and in the other at £2.10s. per centum per annum. Both agreements made express provision as to the rights of the vendor in the event of any of the instalments of purchase money being in arrear for the time specified in the agreements or in the event of the purchasers making default in the performance or observance of any other stipulations or agreement. In both cases it was provided that :-

30 "in any such case the vendor without  
"prejudice to his other rights and remedies  
"hereunder may at his option exercise any  
"of the following remedies namely :-

40 "(a) May enforce this present contract in  
which case the whole of the purchase  
money and interest then unpaid shall  
become due and at once payable or

In the  
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Appeal

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No. 15 (b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

"(b) May rescind this contract of sale and thereupon all moneys theretofore paid shall be forfeited to the vendor as liquidated damages and

(i) May re-enter upon and take possession of the said land hereby agreed to be sold and all improvements thereon without the necessity of giving any notice or making any formal demand and 10

(ii) May at the option of the vendor re-sell the said land and improvements either by public auction or private contract subject to such stipulations as he may think fit and any deficiency in price which may result on and all expenses attending a re-sale or attempted re-sale shall be made good by the purchasers and shall be recoverable by the vendor as liquidated damages the purchasers receiving credit for any payments made in reduction of the purchase moneys. Any increase in price on re-sale after deduction of expenses shall belong to the vendor". 20

Very little money was ever paid by the purchasers under either agreement. In the case of the agreement of 16 February 1948 approximately £825 had been paid as at 31 December 1966. In the case of the agreement of 23 August 1948 approximately £1,100 had been paid. The outstanding balances (including arrears of interest and the total purchase price) were £10,331 and £8,276 respectively. It is clear (as was found by the learned judge after giving consideration to a certain deed dated 24 September 1952 and an agreement of 28 July 1954 which are referred to in the judgment) that as from 29 July 1954 (in the 40

case of the agreement of 16 February 1948) and 25 October 1952 (in the case of the agreement of 23 August 1948) the purchasers were continuously in default both in the payment of quarterly instalments and also under clauses in both agreements which provided that the purchasers would obtain a survey of the two areas of land. Both agreements provided that time would be of the essence.

In the  
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No. 15(b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

10           The present proceedings were originally brought by the appellant against the respondent in his personal capacity and also as administrator of the estate of Ujagir who apparently died at some time before the writ was issued on 23 October 1967. The trial judge, for reasons set out in his judgment, dealt with the action as being brought against the respondent only. No point was raised in this connection at the hearing of this appeal. The whole matter was

20           argued on the basis that the respondent had been in continuous possession of the lands in question since the agreements were entered into in 1948 and that the proceedings were properly dealt with in the Supreme Court as against him only. Finally, it was common ground in argument before us that although Shahbaz Khan made various demands for payment during his lifetime he did not in fact rescind either agreement. He died on 29 May 1964 and after various difficulties

30           Letters of Administration with the will annexed were granted to the appellant on 5 January 1967. It was also common ground that the appellant did on 3 April 1967 send a letter which was an effective rescission of both agreements and which in the case of each agreement stated that the agreement was terminated "for reasons, amongst the many others, for non-payment of your debts".

40           The Statutes of Limitation applicable in Fiji at all material times relevant to the present proceedings were the Real Property Limitation Act 1833 (Imperial) 3 & 4 Will. 4 C. 27 as amended by the Real Property

In the  
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Appeal

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No. 15 (b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

Limitation Act 1874 (Imperial) 37 & 38 Vict. C.  
57. These Imperial Acts were in force in Fiji  
by virtue of the Statute of Limitations  
Declaration Ordinance Cap. 137 Laws of Fiji 1955.  
Under the Revised Edition of the Laws Ordinance  
1965 (Section 5 (1) and the First Schedule) the  
Statute of Limitations Declaration Ordinance  
Cap.137 was omitted from the revised edition of  
the Laws of Fiji provided that the Ordinance  
should remain in force until the same should  
have been expressly repealed or should have  
expired, become spent or had its effect, which  
it has not, so far as these proceedings are  
concerned.

10

It will be convenient if I set out at this  
stage the provisions of the two Statutes which  
are particularly relevant to the present case.  
Section 1 of the Act of 1874 provides as  
follows :-

" After the commencement of this Act no  
"person shall make an entry or distress, or  
"bring an action or suit, to recover any  
"land or rent, but within twelve years next  
"after the time at which the right to make  
"such entry or distress, or to bring such  
"action or suit, shall have first accrued  
"to come person through whom he claims; or  
"if such right shall not have accrued to  
"any person through whom he claims, then  
"within twelve years next after the time at  
"which the right to make such entry or  
"distress, or to bring such action or suit,  
"shall have first accrued to the person  
"making or bringing the same".

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Sections 3 and 4 of the Act of 1833 (in so far  
as they are material) are as follows :-

"3. In the construction of this Act the  
"right to make an entry or distress or bring  
"an action to recover any land or rent  
"shall be deemed to have first accrued at  
"such time as hereinafter is mentioned;  
"(that is to say,).....

40

"and when the person claiming such land or  
"rent, or the person through whom he claims  
"shall have become entitled by reason of  
"any forfeiture or breach of condition,  
"then such right shall be deemed to have  
"first accrued when such forfeiture was  
"incurred or such condition was broken".

In the  
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No.15 (b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

10

"4. Provided always, that when any right  
"to make an entry or distress or to bring  
"an action to recover any land or rent,  
"by reason of any forfeiture or breach of  
"condition, shall have first accrued in  
"respect of any estate or interest in  
"reversion or remainder, and the land or  
"rent shall not have been recovered by  
"virtue of such right, the right to make  
"an entry or distress or bring an action  
"to recover such land or rent shall be  
"deemed to have first accrued in respect  
"of such estate or interest at the time  
"when the same shall have become an estate  
"or interest in possession, as if no such  
"forfeiture or breach of condition had  
"happened".

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40

By Section 6 of the Act of 1833 time does not  
cease to run in respect of the gap between the  
death of any deceased person and the  
appointment of his administrator. The learned  
judge, after referring to the provisions of  
Section 3 of the 1833 Act which I have set out  
above, held that on 25 October 1952 Shahbaz  
Khan became entitled to rescind the agreement  
of August 1948 and on 29 July 1954 became  
entitled to rescind the agreement of February  
1948. He held accordingly that it was on those  
two dates that the right of Shahbaz Khan (and  
accordingly of the appellant) to bring an  
action for the recovery of the two pieces of  
land first accrued and that as a result the  
action was statute-barred as a period of more  
than 12 years had expired prior to 19 October  
1970. I should explain at this stage that the

In the  
Court of  
Appeal

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writ when originally issued contained no claim for possession and it was not until 19 October 1970 that a prayer for possession of the land was added by amendment.

No.15 (b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

Against the foregoing background I now turn to consider the various submissions made by Mr Kermode in support of the appeal :-

- (1) Section 14 of the Land (Transfer and Registration) Ordinance 1833 (Cap.136) makes the title of a registered proprietor absolute and indefeasible except on the ground of fraud or misrepresentation or of "adverse possession in another for the prescriptive period". The possession of the respondent was at all times referable to the two agreements and was accordingly not adverse. 10
- (2) The learned judge erred in equating a right to rescind with a right to re-enter 20
- (3) The provisions of Section 4 of the Act of 1833 governed the case and accordingly time did not run until notice of rescission was given in the year 1967.
- (4) Shahbaz Khan as vendor was a constructive trustee for the respondent as purchaser and accordingly time could not run against the vendor by virtue of the proviso to Section 7 of the Act of 1833 30

The first question which arises in relation to the question of "adverse possession" is the meaning which is to be given to that phrase as it is used in Section 14 of the Land (Transfer and Registration) Ordinance. The difficulty which arises is conveniently demonstrated by reference to the following passage in Preston and Newsom - Limitation of 40

Actions (3rd Edition) at pp.86-87.

In the  
Court of  
Appeal

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No. 15 (b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

10 " Before the Real Property Limitation Act,  
"1833, "adverse possession" was a term of  
"art. It arbitrarily excluded the  
"possession of persons related to the true  
"owner in particular ways, irrespective of  
"their intentions or the true nature of  
"their holdings. Thus, one co-owner could  
"not have possession adverse to another;  
"nor could a younger brother have possession  
"adverse to the heir. Again, possession  
"which was adverse could be made  
"ineffective by a "mere entry" or a  
"continual claim" by the true owner, and  
"these might be purely formal acts not  
"amounting to a recovery of possession of  
"the land.

20 " By the 1833 Act, ss.10 to 13, the old  
"rules were abolished. Denman, C.J., said  
"in Nepean v. Doe d. Knight (1837), 2 M. &  
"W. 894, at p. 911: "We are all clearly  
"of opinion that the Real Property  
"Limited Act, 1833, has done away with the  
"doctrine of non-adverse possession.. the  
"question is whether twenty years have  
"elapsed since the right accrued." The  
"effect of that Act was therefore to  
"substitute for a period of adverse  
"possession in the old sense a simple  
30 "period of time calculated from the accrual  
"of the right of action. The date from  
"which time ran was to be ascertained from  
"the provisions of the 1833 Act, though in  
"some cases resort might be had to general  
"principles (see p.95).

40 " The term "adverse possession", however,  
"continued to be used as a matter of  
"convenience for all cases in which a person  
"had taken possession of another's land  
"and time was running in his favour.  
"The content of the term was now quite  
"different."



In the  
Court of  
Appeal

No. 15 (b)  
Judgment  
of Richmond  
J.A.  
15th July  
1971  
(continued)

I am not aware of any decision of this Court in which it has been decided whether the phrase "adverse possession" in Section 14 should be construed in the same sense as that phrase was used prior to 1833 or in the more modern sense referred to in the foregoing passage from Preston and Newsom. Similar questions have however arisen in Australia at first instance and the effect of the Australian authorities was discussed by Wolff C.J. in McWhirter v. Emerson-Elliott (1960) W.A.R. 208 at pp.214-215:- 10

" At one time (see Robertson v. Keith (1870), 1 V.R. (E) 11, per Molsworth J., "at p. 15) there was some opinion that the "term "adverse possession" as used in the "Act meant adverse possession according "to the meaning given to the term prior to "the passing of the Imperial Act 3 and 4 "Will. IV c. 27 (1833) - a meaning which "Darby and Bosanquet, Statutes of 20 "Limitations, 2nd ed., p.274, point out "was not easy of ascertainment.

" But since the passing of the Imperial "Act referred to, the doctrine of adverse "possession has been abolished "and the "only question under the Acts now in force "is whether 12 years have elapsed since "the claimant's right accrued whatever be "the nature of the present holder's "possession" (Darby and Bosanquet, *ibid*, 30 "p. 275).

" The earlier doctrine in regard to the "meaning of "adverse possession" under the "Transfer of Land Act has not been "maintained (see per Fellows J., in "Staughton v. Brown (1875), 1 V.L.R.(L) "150, at p.159; see also Murphy v. Michel "(1867), 4 W.W. & A'B. (L) 13, at p.19, per "Stawell, C.J.; May v. Martin (1885), 11 "V.L.R. 562, at p.585, per Holroyd, J.). In 40 "my opinion, "adverse possession" should "be construed in accordance with the meaning "given to the term "possession" in the

"Limitation Act 1935 (see W.A.Stat. No.35 of  
"1935, ss. 4 and 5; and Nepean v. Doe d.  
"Knight (1837), 2 M. & W. 894, per Lord  
"Denman, C.J., at pp. 911-12, [46 R.R.7897])."

In the  
Court of  
Appeal

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10 I find myself in complete agreement with the  
conclusions arrived at in the more modern  
Australian cases and accordingly I am of the  
view that the provisions of Section 14 of the  
Ordinance do not in this respect put the  
appellant in any stronger position than he  
would be in if the matter were considered solely  
by relation to the Acts of 1833 and 1874. In  
that connection the modern position as to  
"adverse possession" has now been authoritatively  
stated by the Privy Council in Paradise Beach  
and Transportation Company Limited v. Price-  
Robinson (1968) A.C. 1072. Their Lordships  
(at p. 1083) clearly accepted as an accurate  
statement of the law the following observations  
20 of Denman C.J. in Culley v. Doe d. Taylerson  
(1840) 11 Ad. & E. 1088, 1015 :-

No.15 (b)  
Judgment  
of Richmond  
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1971  
(continued)

30 " The effect of this section (No.2) is  
"to put an end to all questions and  
"discussions, whether the possession of  
"lands, &c., be adverse or not; and, if  
"one party has been in the actual possession  
"for twenty years, whether adversely or  
"not, the claimant, whose original right  
"of entry accrued above twenty years  
"before bringing the ejectment, is barred  
"by this section."

40 It is also clear that since the decision of  
the Privy Council it cannot be said that there  
is any general rule that "possession is never  
adverse if it can be referred to a lawful  
title" (per Page-Wood V.C., in Thomas v. Thomas  
(1855) 2 K. & J. 79, 83). In Paradise Beach  
and Transportation Company Limited v. Price-  
Robinson two daughters of a testator remained  
in possession of certain land pursuant to a  
devise of that land to themselves and their  
brothers as tenants in common. The brothers

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did not themselves enter into possession throughout the statutory period of limitation. Although the possession of the two daughters was attributable to a lawful title and was in no way wrongful as against their brothers it was nevertheless continuous and open and it was held that the title of the brothers was extinguished by Section 34 of the Act of 1833.

In the present case it was not questioned that the possession of the respondent was physically of a nature sufficient to satisfy the requirements of actual possession during the entire period commencing with the making of the two agreements in 1948. In my view if that possession was "adverse", in the modern sense of that word, then it did not cease to be so on the grounds that it was referable to a lawful title because of the continued existence of the agreements until the notice of rescission was given in 1967. The vital question to be decided is whether or not more than 12 years elapsed from the time at which the right of Shahbaz Khan to make an entry or bring an action or suit to recover the land first accrued.

10

20

This brings me to a consideration of the second main submission made by Mr Kermodé. It was, as already stated, that the learned judge erred in equating a right to rescind with a right to enter. Mr Kermodé pointed out that the agreements were not so worded as to bring about their automatic termination upon a default by the purchasers. The vendor is given a right of rescission but unless and until he rescinds he has no right to resume possession of the lands. He submitted accordingly that the giving of a notice of rescission was a condition precedent to any right of re-entry arising.

30

This question depends upon the combined effect of Section 1 of the Act of 1874 and Section 3 of the Act of 1833.

40

The effect of Section 1 is to make the 12 year period of limitation run from the time when the right of Shahbaz Khan to bring an action to recover the land "shall have first accrued". In the circumstances of the present case the time when such a right of action accrued to Shahbaz Khan must be equated with the time when a right of entry accrued to him. As was pointed out by Theisiger L.J. when delivering the judgment of the Court of Appeal in Governors of Magdalen Hospital v. Knotts (1878) 8 Ch. D. 709, 727, 728, "the Statute speaks not only of the right of action but of the right of entry and, in truth, where the claim is to the possession of land, the real right is the right of entry and the right of action is only given to enforce the right of entry".

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Section 3 of the Act of 1833 makes particular provision as to the time when a right of entry shall be deemed to have accrued in the cases which are specifically referred to in that section. I propose to consider the present case, in the first instance, solely by reference to the more general language of Section 1. On that basis the question is whether a right of entry "accrued" to Shahbaz Khan within 12 years prior to 19 October 1970. The argument for the respondent is that as from 25 October 1952 and 29 July 1954, at the latest, a situation had arisen in the case of the two agreements respectively whereby as a result of defaults by the respondent a right accrued to Shahbaz Khan to "re-enter upon and take possession of the said land hereby agreed to be sold and all improvements thereon without the necessity of giving any notice or making any formal demand". If this view is correct then the consequences to the appellant would be disastrous as Section 34 of the Act of 1833, described by Lord Hanworth M.R. in Sykes v. Williams (1933), 1 Ch. 285, 293, as a "violent" section, provides that :-

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" At the determination of the period  
"limited by this Act to any person for  
"making an entry or distress, or bringing  
"any writ of quare impedit or other action  
"or suit, the right and title of such  
"person to the land, rent, or advowson,  
"for the recovery whereof such entry,  
"distress, action or suit respectively  
"might have been made or brought within  
"such period, shall be extinguished."

10

For the appellant, on the other hand, it is submitted that no right of entry "accrued" until the vendor elected to rescind the contract. If this submission is correct then the present action is well within the 12 years period, it being common ground that no effective rescission took place until 3 April 1967.

I am unaware of any decision, either in England or any Commonwealth country, which directly deals with the application of the Statutes of Limitation to long-term agreements for the sale and purchase of land. It would seem clear in principle, however, that a right of entry cannot "accrue" until all conditions precedent to its exercise have been fulfilled. The problem seems to be substantially the same as that which faced the Court of Appeal in Joachinson v. Swiss Bank Corporation (1921) 3 K.B., 110. In that case it was held that a cause of action did not accrue against a bank for money standing to the credit of a customer on current account until fulfilment of the necessary condition precedent of a demand on the bank by the customer. The general principle that a cause of action does not accrue until all conditions precedent to its existence have been fulfilled was not in question. The emphasis was rather on determining the real terms of the contract between the parties. Thus Bankes L.J. said (at p.115 and 117) :-

20

30

40

" The question whether there was an  
"accrued cause of action on August 1,  
"1914, depends upon whether a demand

"upon a banker is necessary before he  
"comes under an obligation to pay his  
"customer the amount standing to the  
"customer's credit on his current  
"account.....In every case, therefore,  
"where this question arises the test must  
"be whether the parties have, or have not,  
"agreed that an actual demand shall be a  
"condition precedent to the existence of  
"a present enforceable debt."

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Reference may also be made to the decision of  
Upjohn J. in Lloyd's Bank Ltd. v. Margolis and  
Others (1954) 1 All E.R. 734, and of Turner J.  
in Murphy v. Lawrence (1960) N.Z.L.R. 772.

In the present case the agreements provide  
that on specified defaults by the purchaser the  
vendor is to have the option of enforcing the  
contract or in the alternative that he :-

20

"(b) May rescind this contract of sale  
and thereupon all moneys theretofore  
paid shall be forfeited to the vendor  
as liquidated damages and

"(i) May re-enter upon and take possession  
of the said land.....

and

"(ii) May at the option of the vendor  
re-sell the said land.....".

30

On the fair construction of the foregoing  
provisions I am of opinion that the word  
"thereupon" governs both the automatic provision  
as to forfeiture of moneys paid and the optional  
rights of re-entry and resale. As a matter of  
language therefore the exercise of the right  
of rescission is made a condition precedent to  
the accrual of the right of re-entry. Nor do  
I see any reason to regard the substance of the  
agreement as differing in any way from the  
language in which it is recorded. It is one  
thing for a purchaser to confer an unqualified

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right of re-entry operative immediately upon the purchaser's default. It is another thing altogether for the purchaser to stipulate for the additional requirement of a rescission of the contract. The exact consequences of such a rescission under a clause such as the present one are not entirely clear. They were discussed by Dixon J. in McDonald v. Dennys Lascelles Ltd. (1933) 48 C.L.R. 457 at 477-479. It is however at least clear that the purchaser is freed from his future obligations under the contract and from liability to pay arrears of instalments of the purchase price. The election to rescind is therefore of considerable moment to the purchaser. In my view the language and substance of the present agreements made the right of re-entry an incident of rescission rather than an incident of default by the purchaser. The right to re-enter (and hence any right to recover the land by action) could not accrue until the vendor elected to rescind. 10 20

In this respect it seems to me that the express provisions of the present agreements merely reflect the position which prevails in the case of a rescission at common law of an agreement for the sale of land by reason of an essential breach of the agreement. The right to recover possession of the land is only one of the several consequences which flow from such a rescission, other consequences being a revesting in the vendor of the equitable ownership of the land and a general obligation on the part of the vendor to make restitution of instalments of purchase money other than the deposit: Mason v. Clouet (1924) A.C. 980. Whether or not there be an express provision for rescission therefore it seems to me quite unreal to say that a right of entry arises on a breach of condition. Once this position is reached then it can make no difference that the time when rescission takes place depends largely on the whim of the vendor: Connolly v. Leahy (1899) 2 I.R. 344. 30 40

10 So far I have approached the matter solely by reference to the general provisions of Section 1 of the Act of 1874. It is now necessary to consider whether the particular provisions of Section 3 of the Act of 1833 affect the conclusion at which I have so far arrived. By that section the right to make an entry or to bring an action to recover any land is deemed to have first accrued at the times therein mentioned, the only relevant provision being :-

"... and when the person claiming such land....., or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken".

20 In my opinion the words which I have placed in italics should be interpreted in accordance with the maxim In jure non remota causa sed proxima spectatur. For reasons which I have already given I regard the act of rescission and not the breach of a condition as the proximate and effective cause entitling the vendor to re-enter. I think that the draftsman of the Statute had in mind the common kinds of conditions and forfeiture clauses which on breach give rise to an immediate right of entry without the necessity of the person entitled taking any further step as a condition precedent to the right of entry arising. Thus, but for the ameliorating provisions of Section 4 of the Act of 1833, Section 3 would apply to the ordinary clauses in leases providing for a right of re-entry on default. It is true that such clauses, even if so expressed as to bring about an automatic forfeiture, are interpreted as merely giving the lessor an option to re-enter  
30 - Davenport v. The Queen (1877) 3 App. Cas. 115 at 128. A similar situation prevails in the case of a fee simple upon condition  
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(Megarry and Wade - The Law of Real Property (3rd Ed.) p.78). In both cases however the lessor or grantor can elect to enter immediately on default or breach of condition. I believe that the reason for Section 3 lies in this right of election as but for its enactment the person in possession could be regarded as continuing a non-adverse possession unless and until the election was made. In the present case however the optional right of the vendor to re-enter did not arise at all until (and as an incident of) the exercise of his election to rescind. 10

This vital feature renders inapplicable to the present case the reasoning of the Court of Appeal in Governors of Magdalen College v. Knotts (1878) 8 Ch. D. 709 (subsequently decided on different grounds in the House of Lords (1879) 4 App. Cas. 324). In that case (at p.728) the Court of Appeal clearly took the view that a landlord who had granted a voidable lease could re-enter without any previous demand or notice. Where however the contract makes rescission a condition precedent to the right of re-entry then some form of previous notice is necessary, as the general rule is that rescission must take the form of an unequivocal election by words or conduct made known to the defaulting party. There is nothing in the language of the agreements or in the general circumstances to warrant a departure from that general rule in the present case. The question is discussed at length in Car and Universal Finance Co. v. Caldwell (1965) 1 Q.B. 525, a case of fraud in which special circumstances were held to exist. The present case is accordingly one where the right of entry (in the sense of a right to enter and remain in possession) was dependent on notice to the purchaser. Even if rescission took the form of an actual entry made known to the purchaser the real right to enter and remain in possession would not arise until such entry and communication thereof to the purchaser has been effected. 20 30 40

For the foregoing reasons I am of opinion that the second main submission which was made to use by Mr Kermode is correct, and that on that ground the appeal should succeed.

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10 In those circumstances it may perhaps be unnecessary for me to deal with the remaining arguments which were addressed to us by Mr Kermode. As however it may be in some way helpful to the parties I propose to discuss them briefly.

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20 Mr Kermode relied on Section 4 of the Act of 1833 to take the appellant's case out of the operation of Section 3 even if the proper view was to regard the right of entry as accruing immediately on default. Section 4 deals in my opinion, with the case of interests in remainder or reversion which eventually fall into possession for some reason other than a forfeiture incurred or a condition broken by the person entitled to a precedent interest in possession. The most obvious case is the reversion of a lessor falling into possession at the expiration of the term. Likewise a remainderman who fails to enforce a forfeiture of a preceding life estate obtains a fresh right to possession when the life estate terminates on the death of the life tenant: Astley v. Earl of Essex (1874) L.R. 18 Eq. 290. Section 4 can have no application to the relationship of vendor and purchaser as any reversionary interest of the vendor, if one can describe it as such, could only fall into possession as a result of a breach of condition and not, as the section obviously contemplates, for some other reason altogether. The purpose of Section 4 is explained in the following way in Darby and Bosanquet Statutes of Limitations (2nd Ed.) at pp. 335-336:-

30  
40 "Under the old law a remainderman or reversioner who had a right of entry on forfeiture of the particular estate was not bound to enforce the forfeiture, and his rights at the determination of such estate were in no way prejudiced by his

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"not enforcing the forfeiture (Doe d. Cook  
"v. Denvers 7 East 279; and see Doe d.  
"Allen v. Blakeway 5 C. & P., 563). The  
"object of the 4th Section of 3 and 4 Will.  
"IV C. 27 is to preserve this rule".

Lastly, Mr Kermode submitted that the  
effect of the proviso to Section 7 of the Act of  
1833 was to prevent time running against the  
vendor. Section 7 is as follows :-

"When any person shall be in possession or 10  
"in receipt of the profits of any land or  
"in receipt of any rent, as tenant at will,  
"the right of the person entitled subject  
"thereto, or of the person through whom he  
"claims, to make an entry or distress or  
"bring an action to recover such land or  
"rent, shall be deemed to have first  
"accrued, either at the determination of  
"such tenancy, or at the expiration of one 20  
"year next after the commencement of such  
"tenancy, at which time such tenancy shall  
"be deemed to have determined: Provided  
"always, that no mortgagor or cestui que  
"trust shall be deemed to be a tenant at  
"will, within the meaning of this clause,  
"to his mortgagee or trustee."

It will be seen that the foregoing section  
deals with the case of tenants at will and it is  
one of the sections of the Act designed to 30  
curtail the earlier rules as to non-adverse  
possession. The proviso was inserted because  
of the legal principle whereby the possession  
of a cestui que trust under a simple trust is  
accounted for by describing him as tenant at  
will to the trustee. It followed, under the law  
prior to 1833, that the possession of the  
cestui que trust, while held under such  
tenancy, was not adverse to the trustee: Keene  
v. Deardon (1807) 8 East, 248: Smith v. King  
(1812) 16 East, 283. The purpose of the proviso 40  
to section 7 is obviously to continue the earlier  
principle of law in the case of a cestui que  
trust who in that capacity holds as a tenant at

will. In the case of vendor and purchaser, the vendor is a constructive trustee for the purchaser and Drummond v. Sant (1871) L.R. 6, Q.B., 763 is authority for the application of the proviso to constructive trusts. However that may be, it is clear that the effect of the proviso is merely to create an exception to the earlier part of Section 7. I do not think that it can possibly be read as creating an exception to the provisions of Section 3 of the Act whereby a right to make an entry or bring an action to recover any land is deemed to have first accrued when a forfeiture was incurred or a condition was broken. The purpose of the proviso is discussed at some length in Lightwood - The Time Limit on Actions (1909) at pp. 75-79.

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Finally, I should mention that after hearing counsel it occurred to the members of the Court that some reliance might possibly be placed by the appellant on the decision of Lord Wright (then Wright J.) in Barratt v. Richardson and Creswell (1930) 1 K.B. 686. We accordingly invited counsel to make further submissions on the point. Barratt v. Richardson and Creswell was a case of successive defaults under a lease and it was held that the lessor was entitled to rely on the last non-payment of rent before the writ was issued or any previous non-payment up to 12 years before the writ. The difficulty about applying that case to the present circumstances is that in Barratt v. Richardson and Creswell no question could arise as to the operation of Section 34 of the Act of 1833 because of the saving provisions of Section 4. I express no concluded view on the matter, but I am inclined to think that if time began to run in the present case when contended by the respondent then it would not stop running as a result of subsequent defaults. If this be so then the effect of Section 34 would be to extinguish the right and title of the vendor at the end of twelve years from the original default.

The application of the Acts of 1833 and

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(continued)

1874 to long-term agreements for sale and purchase is complicated by the fact that the purchase money and interest thereon is secured by the vendor's lien and is accordingly money secured on land within the meaning of Section 8 of the Act of 1874. In the present case some small payments were made by the respondent in the year 1961 on account of principal or interest. It would seem, therefore, that at the time of rescission in 1967 the vendor could have sued for all arrears of instalments and could also have enforced his lien to that extent - Nives v. Nives (1880) 15 Ch. D. 649. Yet if the respondent's contention be correct that the times for re-entry ran from 1952 and 1954 then the title of Shahbaz Khan to the land would have been extinguished in 1966 and he would accordingly have had no title to convey to the purchaser on completion. Such a difficult and conflicting situation is however avoided if I am correct in my earlier expressed opinion that the time for re-entry in fact ran from notice of rescission. 10 20

It remains to deal with certain other aspects of the case which were referred to by Mr Ramrakha.

The first concerned the pleadings. In the course of his submissions Mr Kermode raised certain matters as taking the case out of the Statutes of Limitation, such matters not having been pleaded either in the statement of claim or in the reply. In particular, he referred to a caveat (Exhibit 7) dated 6 February 1968, signed by the respondent's solicitors, and claiming an estate or interest as purchaser under the 1948 agreements. He submitted that this caveat was an acknowledgment of the vendor's title. All I need say on this branch of the case is that I have not found it necessary, in considering this appeal, to refer to any matters which are outside the scope of the pleadings. 30 40

The next question is as to relief against forfeiture. Mr Ramrakha submitted that the provisions of the agreements making time of the essence and providing for rescission and forfeiture of instalments of purchase money already paid by the purchasers amount to a penalty. In this he may well be correct - Kilmer v. British Columbia Orchard Lands Limited (1913) A.C., 319. Assuming that he is correct then there can be no doubt that the Court has jurisdiction to give relief against forfeiture either by taking steps to enable specific performance of the agreement or alternatively by ensuring a return of such part of the monies paid by the purchasers as would result in a fair restitutio in integrum.

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(continued)

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As to the first of these courses, Mr Ramrakha submitted that the respondent should be allowed a reasonable period of time within which to make payment of all monies owing under the agreements. It is to be observed that no evidence was given as to the readiness, willingness or ability of the respondent to make payment of the large amounts now owing. For very many years he has made no effort whatsoever to carry out his obligations under the agreements. In these circumstances I see no justification whatsoever for acceding to the first suggestion made by Mr Ramrakha.

As to the second suggestion, I accept the position that the Courts have often directed an enquiry in order to ascertain the basis upon which restitutio in integrum could fairly be accomplished. This would involve a fair occupation rent being allowed to the vendor. In the present case the amounts paid by the purchasers prior to rescission are so small in amount compared with the value of the land and the length of the respondent's occupation that it would serve no useful purpose to order such an enquiry. In my view no case has been made out for relief against forfeiture of monies received by the vendor prior to rescission.

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There is only one other matter which requires mentioning. It appears that after the agreements were rescinded the appellant credited as against the monies owing by the purchasers thereunder a sum of £1,107-3-6 realised as a result of the sale of certain properties over which the purchasers had given security by way of mortgage. I need not go into the details of this matter, but merely record the fact that Mr Kermode on behalf of the appellant undertook at the hearing of this appeal that the appellant would abandon any claim to retain this money as against monies owing under the agreements of 1948. This undertaking related solely to monies owing by the respondent under the agreements and did not extend to any monies which might be owing by the respondent on any other account.

10

For the reasons which I have given I would allow the appeal and would enter judgment granting to the appellant possession of the lands the subject matter of the 1948 agreements. No case was made out for the granting of any of the other forms of relief sought in the amended statement of claim.

20

In the Court below the counterclaim for relief against forfeiture was dismissed and it follows from what I have said in this judgment that no grounds have been made out requiring this Court to interfere with that dismissal.

30

I would also allow costs to the appellant both in this Court and in the Court below.

Sgd. C.P.Richmond  
Judge of Appeal

15th July 1971

No. 15 (c)  
JUDGMENT OF MARSACK J.A.

In the  
Court of  
Appeal

IN THE FIJI COURT OF APPEAL  
Civil Jurisdiction

No.15 (c)  
Judgment  
of Marsack  
J.A.  
15th July  
1971

Civil Appeal No. 35 of 1970

Between: FAIZ MOHAMMED KHAN SHERANI  
as Administrator of the  
Estate of Shahbaz Khan, deceased  
Appellant  
(Original Plaintiff)

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- and -

LAKSHMIJIT s/o Bhai Suchit  
Respondent  
(Original Defendant)

Date of Hearing: 23rd April, 1971

Delivery of Judgment: 15th July, 1971

Mr. R.G.Kermode for the appellant

Mr. K.C.Ramrakha for the Respondent

Marsack, J.A. JUDGMENT

20

I have had the advantage of reading the judgment prepared by Richmond J.A. I fully agree with that judgment and with the reasoning upon which it is based, and have nothing to add.

Sgd. C.C.Marsack  
JUDGE OF APPEAL

15th July, 1971

Messrs. Munro, Leys, Kermode & Co. - for the Appellant  
Messrs. Ramrakhas - for the Respondent



In the  
Court of  
Appeal

No. 16

ORDER GRANTING CONDITIONAL LEAVE  
TO APPEAL TO HER MAJESTY IN COUNCIL

No.16  
Order granting  
Conditional  
Leave to  
Appeal to  
Her Majesty  
in Council  
5th August  
1971

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

Civil Appeal Number 35 of 1970

BETWEEN: FAIZ MOHAMMED KHAN SHERANI as  
Administrator of the Estate of  
Shahbaz Khan Deceased

APPELLANT  
(Original Plaintiff)

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- and -

LAKSHMIJIT s/o Bhai Suchit

RESPONDENT  
(Original Defendant)

Before the Honourable The Chief Justice, Sir  
Clifford James Hammett in Chambers

Thursday, the 5th day of August, 1971

UPON READING the Notice of Motion on behalf  
of the Respondent dated the 29th day of July,  
1971

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AND UPON HEARING Mr. H.M.Patel of counsel  
for the Respondent and Mr. C.D.Singh of counsel  
for the Appellant

IT IS ORDERED that the Respondent do have  
leave to appeal to Her Majesty in Council from  
the Judgment of the Fiji Court of Appeal given  
on the 15th day of July, 1971 under the provisions  
of Rules 2, 3, 4 and 5 of the Fiji (Procedure  
in Appeals to Privy Council) Order 1970 regulating  
the appeal from Fiji to Her Majesty in Council  
upon condition that the respondent do deposit in  
the Supreme Court of Fiji, the sum of \$500.00

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(five hundred dollars) within two months from the date hereof AND IT IS FURTHER ORDERED that the costs of the application be costs in the cause.

BY THE COURT

REGISTRAR

In the  
Court of  
Appeal

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No.16  
Order granting  
Conditional  
Leave to  
Appeal to  
Her Majesty  
in Council  
5th August  
1971  
(continued)

Exhibits

EXHIBIT No. 1

No.1  
Agreement  
for Sale  
16th  
February  
1948

AGREEMENT FOR SALE

FIJI 0770  
DUTY PAID  
29

MEMORANDUM OF AGREEMENT made the 16th day of February, 1948 between SHAHBAZ KHAN (Father's name Ado Khan) of Navitoka in the Province of Naitasiri Landowner (hereinafter called "the vendor") of the one part and UJAGIR (Father's name Rajkumar) of Wainibokasi in the District of Rewa Firewood Dealer and LAKSHMIJIT (Father's name Bhaisuchit) of Suva School teacher (hereinafter called "the purchasers") of the other part 10

WHEREBY IT IS AGREED as follows :-

1. The Vendor will sell to the purchasers who will purchase the freehold estate and interest of the vendor in all that piece of land situate in the District of Rewa in the Island of Vitilevu containing 72 (Seventy-two) acres more or less subject to survey as hereinafter provided known as "Navitoka" (part of) being part of the land comprised and described in the Certificate of Title No. 7064 which said piece of land is approximately delineated in the plan endorsed hereon and therein edged red at and for the price of £80.0.0. (Eighty pounds) per acre which shall be paid and satisfied by the purchasers in the manner following :- 20
- (a) By payment of the sum of £120.0.0 as a deposit and in part payment of the said purchase price as follows :- 30
  - (i) the sum of £50.0.0. was on the 10th day of February 1948 paid to

the vendor on account of the said deposit (the receipt whereof the vendor hereby acknowledges) and

(ii) the further sum of £70.0.0. the balance of the said deposit shall be paid to the vendor not later than the 6th day of April 1948

10 (b) The balance of the said purchase price estimated (subject to survey as aforesaid) to be £5640.0.0. shall be paid by quarterly instalments of £30.0.0. each on the first day of each of the months of August November February and May in each year hereafter until the whole of the said purchase price shall have been paid in full the first such instalment falling due on the 1st day of August 1948.

20 2. If the purchasers shall make default in the payment on the due date thereof of any instalment of purchase money as aforesaid and if such default shall continue for more than seven (7) days the vendor shall (without prejudice to any of his other rights powers and remedies hereunder) be entitled to charge receive and recover from the purchasers interest at the rate of £5.0.0. per centum per annum calculated upon the whole balance of the said  
30 estimated purchase price then remaining unpaid and computed from the due date of such instalment until the date of payment thereof such interest being payable as a first deduction from all moneys next paid to the vendor hereunder until all interest accrued due as aforesaid shall have been paid.

40 3. The purchasers shall be at liberty on any of the days hereinbefore appointed for the payment of purchase moneys without notice to pay off the whole or any part of the said balance purchase moneys then remaining owing hereunder Provided however that any

Exhibits

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No.1  
Agreement  
for Sale  
16th  
February  
1948  
(continued)



and other outgoings whatsoever levied charged or imposed on the said land or on the owner or occupier in respect thereof and will keep the vendor indemnified in respect thereof and will comply with the provisions of all ordinances and regulations relating to public health and the eradication or control of noxious weeds and otherwise affecting the said land and the use and occupation thereof.

Exhibits

\_\_\_\_\_  
No.1  
Agreement  
for Sale  
16th  
February  
1948  
(continued)

10

8. The purchasers will so long as any moneys shall remain owing hereunder to the vendor plant farm cultivate manage and use the said land in a proper and husbandlike manner and will not impoverish or waste the same

20

9. The purchasers will forthwith erect and thereafter maintain to the reasonable satisfaction of the vendor upon all boundaries of the land hereby agreed to be sold (other than along the bank of the creek shown in the plan endorsed hereon) a cattle-proof fence of stout timber posts with four strands of barbed-wire well strained AND it is expressly agreed and declared that the vendor shall not at any time hereafter be liable or be called upon to fence or to contribute towards the cost of erecting or maintaining any fence upon the boundaries of the land hereby agreed to be sold for any purpose whatsoever.

30

10. The purchasers will forthwith proceed to erect on the said land and complete not later than the 31st day of May 1948 a cowshed with milking bails.

40

11. The purchasers shall not while any moneys remain owing to the vendor hereunder cut fell injure or destroy any fruit trees or trees protected in law or any timber or timberlike trees now and thereafter growing on the said land Provided however that the purchasers may cut from the said land such

Exhibits

No.1  
Agreement  
for Sale  
16th  
February  
1948

(continued)

firewood as may be required by them for their personal domestic requirements upon the said land and such fence-posts as may be required for fencing the said land and repairing the fences thereon. No timber firewood fence-posts or other forest produce shall be removed sold or otherwise disposed of from the said land by the purchasers.

12. The vendor shall be entitled while any moneys remain owing to him hereunder to cut fell and remove from the said land "Nuqa" trees and for such purpose to enter thereon at all reasonable times with workmen implements horses bullocks and vehicles. 10
13. It is agreed and declared that the vendor shall not be held to be responsible in any way for the trespass upon the said land of any wild cattle which may enter the said land from any adjoining land owned by the vendor. 20
14. While any moneys shall remain owing hereunder to the vendor the purchasers will whenever required by the vendor by notice in writing so to do execute and give at the purchasers' expense in favour of the vendor a valid first Bill of Sale over all livestock natural increase of livestock machines machinery implements utensils chattels and other things whatsoever of the purchasers then and thereafter upon or about the said land to secure any balance of purchase money then owing hereunder and interest thereon as aforesaid such Bill of Sale to be in such form as may be required by the vendor's solicitors. 30
15. Whilst any moneys shall remain owing by the purchasers to the vendor under this Agreement the purchasers shall not mortgage charge sell assign transfer lease or part with possession of the said land or any part thereof or any improvements thereon or 40





Exhibits

No.1  
Agreement  
for Sale  
16th  
February  
1948  
(continued)

such overdue instalments or if the purchasers shall make default in the performance or observance of any other stipulation or agreement on the part of the purchasers herein contained and if such default shall continue for the space of twenty-one days then and in any such case the vendor without prejudice to his other rights and remedies hereunder may at his option exercise any of the following remedies namely :-

10

(a) May enforce this present contract in which case the whole of the purchase money and interest then unpaid shall become due and at once payable or

(b) May rescind this contract of sale and thereupon all moneys theretofore paid shall be forfeited to the vendor as liquidated damages and

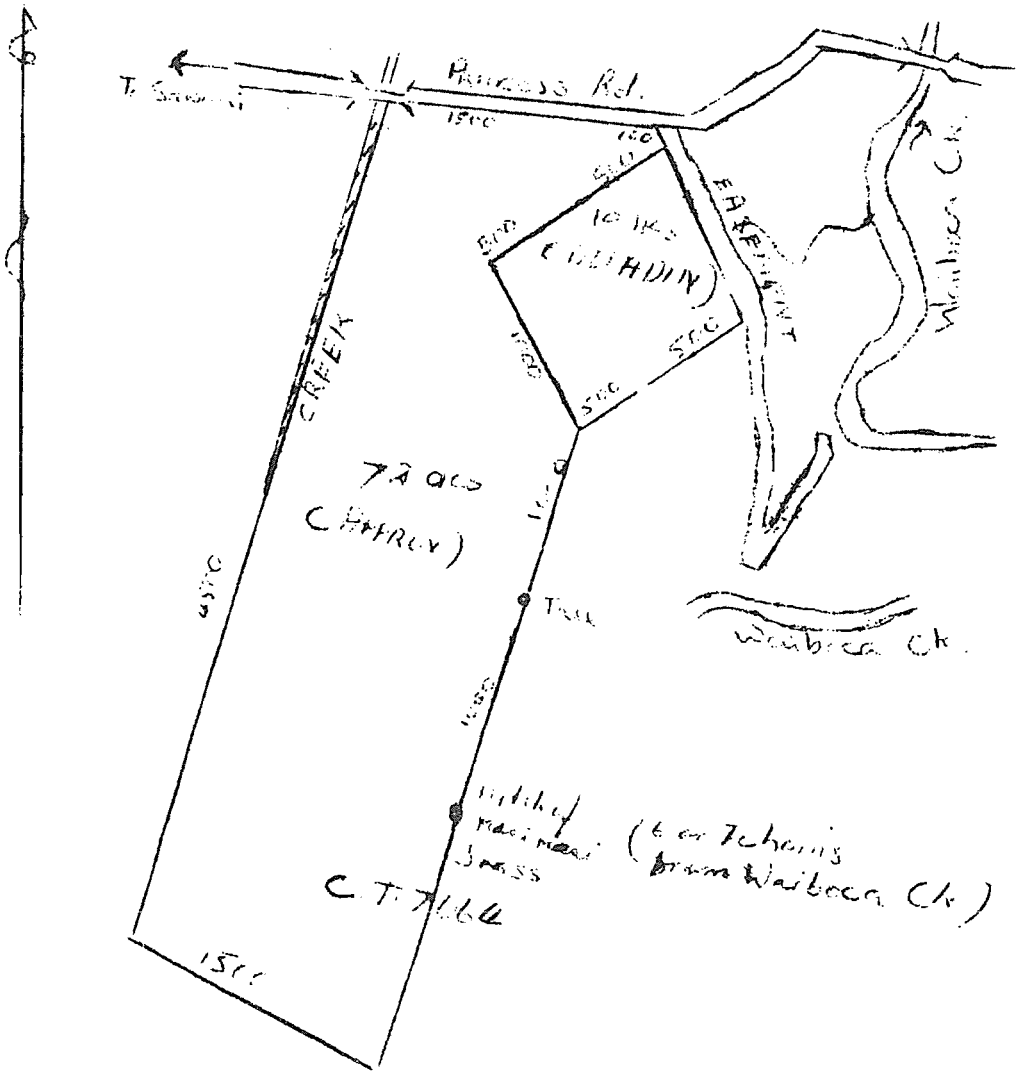
(i) May re-enter upon and take possession of the said land hereby agreed to be sold and all improvements thereon without the necessity of giving any notice or making any formal demand and

20

(ii) May at the option of the vendor re-sell the said land and improvements either by public auction or private contract subject to such stipulations as he may think fit and any deficiency in price which may result on and all expenses attending a re-sale or attempted re-sale shall be made good by the purchasers and shall be recoverable by the vendor as liquidated damages the purchase moneys. Any increase in price on re-sale after deduction of expenses shall belong to the vendor.

30

21. The costs of and incidental to this Agreement shall be borne and paid by the



Exhibits

EXHIBIT No.2

SUPPLEMENTAL AGREEMENT

No.2  
Supplemental  
Agreement  
28th July  
1954

FIJI  
DUTY PAID  
4/-  
10530

3 AUG 1954  
STAMP DUTY.

AN AGREEMENT made the 28th day of July 1954  
BETWEEN SHAHBAZ KHAN (Father's name Ado Khan) 10  
of Navitoka Naitasiri Landowner (hereinafter  
with his executors administrators and assigns  
called "the Vendor") of the one part AND UJAGIR  
(Father's name Rajkumar) and DAKSHMIJIT  
(Father's name Bhai Suchit) of Wainibokasi in  
the province of Rewa Cultivator (hereinafter  
with their respective executors administrators  
and assigns called "the purchasers") of the  
other part SUPPLEMENTAL to a certain Agreement 20  
for Sale and Purchase dated the 23rd day of  
October 1948 and made between the parties  
hereto(hereinafter referred to as "the said  
Agreement") whereby the vendor agreed to sell  
to the purchasers a certain parcel of land more  
particularly described in the said Agreement  
(hereinafter referred to as "the said land")  
for the price and upon and subject to the terms  
and conditions contained in the said Agreement

WHEREAS the purchasers desire to subdivide 30  
that portion of the said land fronting Prince's  
Road in the manner shown in a certain subdivision  
scheme plan prepared by Messrs. Tetzner and  
Bygrave and dated the 20th day of December 1953  
(hereinafter called "the said subdivision")  
and to sell as building sites the lots numbered  
1 to 21 inclusive in the said subdivision AND  
have requested the vendor to consent to the  
said subdivision and to co-operate with the  
purchasers in having the said subdivision duly  
approved by the Subdivision of Land Board and in 40

having the said land surveyed and a survey plan of the said subdivision duly registered which the vendor has agreed to do upon and subject to the terms and conditions hereinafter set out

Exhibits

No. 2  
Supplemental  
Agreement  
28th July  
1954  
(continued)

NOW THIS AGREEMENT WITNESSETH as follows :-

1. IN CONSIDERATION of the covenants and agreements on the part of the purchasers hereinafter contained the vendor hereby agrees with the purchasers that the vendor will at the expense in all things of the purchasers sign all such applications and plans as may be necessary or desirable for the purpose of having the said subdivision approved by the Subdivision of Land Board and a survey plan thereof duly registered in the Office of the Registrar of Titles.
2. IN CONSIDERATION of the foregoing agreement of the vendor the purchasers hereby covenant and agree with the vendor as follows :
- (a) the purchasers will observe the following stipulations in respect of the sale of each of the said lots numbered 1 to 21 inclusive fronting Prince's Road :-
- (i) minimum price - £250.0.0.
- (ii) minimum deposit - £50.0.0. cash
- (iii) balance of purchase price to be paid by instalments of not less than £50.0.0. in each year the first instalment falling due not more than one year after the date of the sale
- (iv) payment of all deposits and purchase moneys to be made at the office of Messrs. Ellis, Munro, Warren & Leys, Solicitors, Suva.
- (b) all moneys received from sales shall after deducting the costs of receiving and disbursing the same be applied as follows :-



(c) the provisions of Clause 2 hereof shall apply in respect of the sale of the lots in any such further subdivision with the following modifications :-

(i) the minimum price of each residential lot shall be £200.0.0.

(ii) the minimum price of each agricultural lot shall be £500.0.0.

Exhibits

No.2  
Supplemental  
Agreement  
28th July  
1954  
(continued)

10 4. THE purchasers will pay all the costs and expenses of and incidental to this agreement and of subdividing and surveying the said land.

5. NOTHING expressed or implied in this agreement shall be deemed a waiver of nor in any way to prejudice the rights powers and remedies of the vendor under or by virtue of either of the said Agreements in respect of any existing default by the purchasers thereunder which rights powers and remedies the vendor hereby expressly reserves.

20 AS WITNESS the hands of the parties.

SIGNED by the said SHAHBAZ )  
KHAN as vendor in the ) SHAHBAZ KHAN  
presence of :- ) HIS LEFT THUMB MARK.

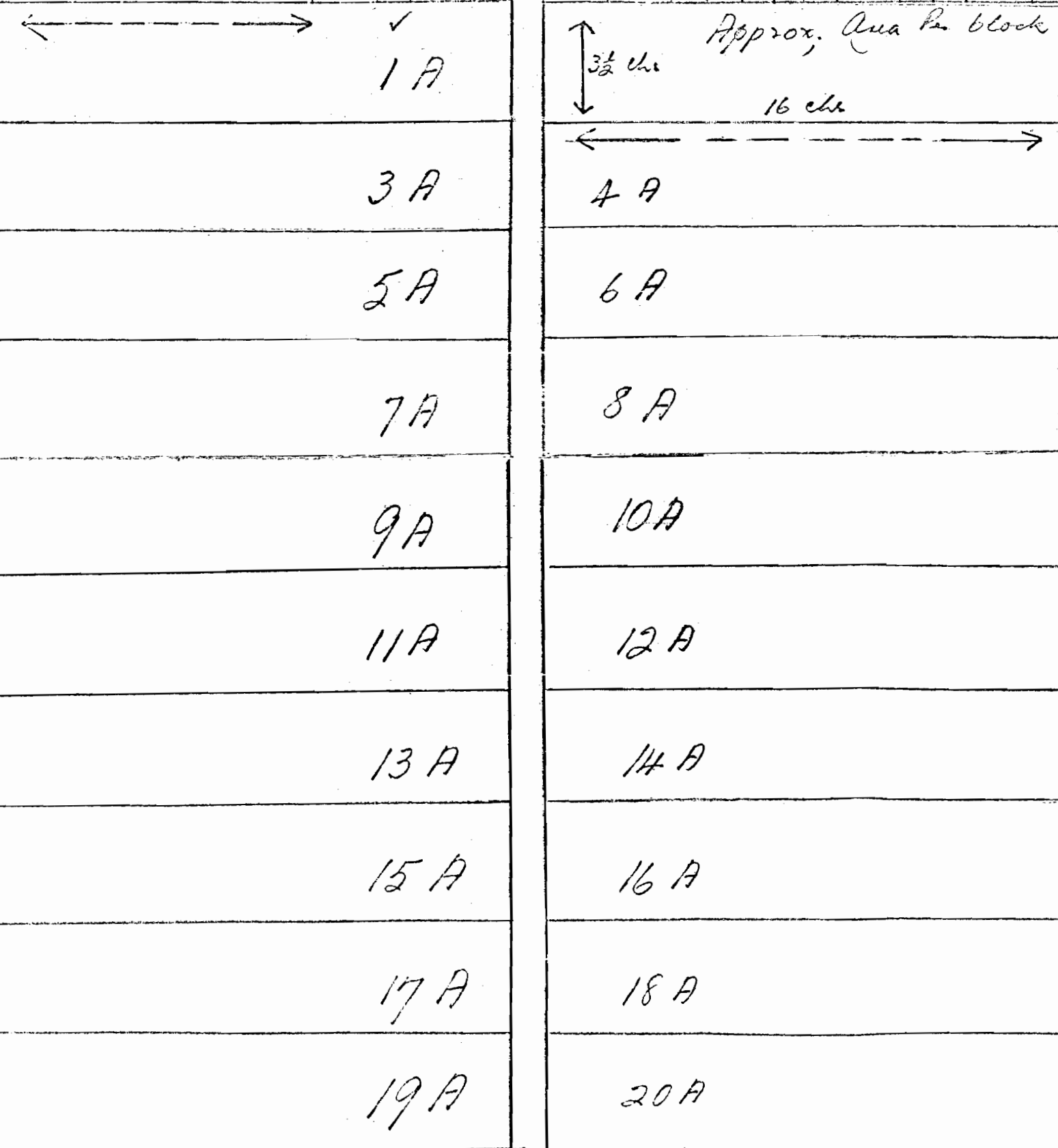
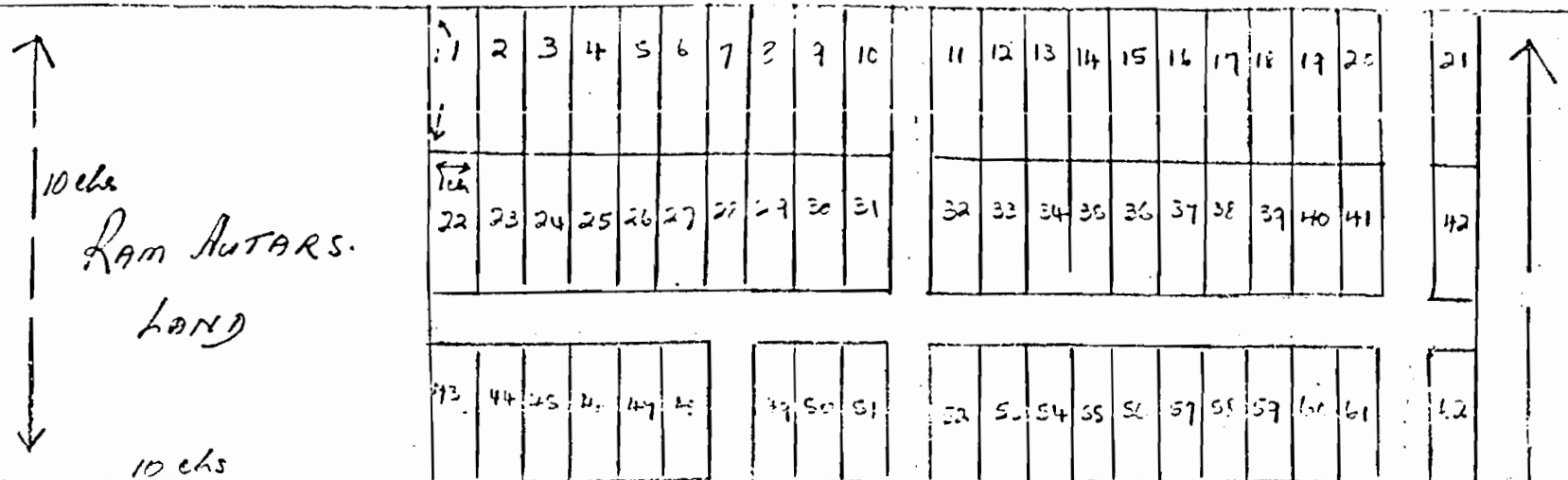
Sgd. S. Deo  
Law Clerk  
Suva

30 SIGNED by the said UJAGIR )  
and LAKSHMIJIT as )  
purchasers in the presence ) SGD. UJAGIR  
of :- ) " LAKSHMIJIT

Sgd. S. Deo  
Law Clerk  
Suva.

NORTH.

To SAWANI PRINCES ROAD To NAISORI



West

East

SHABAZ KHAN  
113  
LEFT  
THROUGH  
MARR.

SHABAZ KHAN

SOUTH

Handwritten signature and initials

Exhibits

EXHIBIT No. 3

No.3  
Death  
Certificate,  
Shahbaz  
Khan  
30th June  
1964

DEATH CERTIFICATE, SHAHBAZ KHAN

1st SCHEDULE - Form No. 2

(CAP.117 - FIJI)

No.2122

REGISTER OF DEATH

1964

DEATH of Shahbaz Khan -- Registered by  
Kenneth Spicer Few -- Registrar-General.

Date of death 29th May, 1964  
When it occurred Navitoko, Sawani

10

DESCRIPTION --

Name and Surname, rank and profession:

Shahbaz Khan s/o Ado Khan - Landlord  
Sex: Male Age: 84 Where born: Afghanistan  
How long in Fiji: 50 Cause of Death: Senility  
Duration of last illness: About 8 months.  
Medical attendant by whom certified: Dr.P.Mehta  
When he last saw deceased: 22nd May, 1964  
Christian and Surname of father: Ado Khan  
Rank or profession: ----  
Christian and maiden Surname of mother: Ma Begum

20

BURIAL --

When buried: 30.5.64 and where Nasinu  
Cemetery Name and religion of Minister, or  
names of witness of burial: Bashir Admad  
Dewan - Muslim, Suva.

IF DECEASED WAS MARRIED --

Where: Lami Suva At what age: 33  
To whom: Bachwan d/o Bhagwandin  
Issue in order of birth, their names and  
ages: Nil

30



Signature, description and residence of  
informate and witness F.M.K.Sherani, Suva

Exhibits

Date and where registered: 30th Jun, 1964  
Suva.

No.3  
Death  
Certificate  
Shahbaz  
Khan  
30th June  
1964  
(continued)

I hereby certify that the above is a true  
copy of an entry in a Register of Deaths kept  
at the Registrar-General's Office, Suva, Fiji  
and extracted this 5th day of November, 1964

Sgd. ?

10

EXHIBIT No. 4

CERTIFICATE OF TITLE OF  
SHAHBAZ KHAN

No.4  
Certificate  
of Title  
of Shahbaz  
Khan  
12th April  
1957

Reference to previous Title  
C.T.7319

No. 9410

FIJI

CERTIFICATE OF TITLE

SHAHBAZ KHAN

(Father's name Ado Khan)  
of Sawani - Landowner.

20

PURSUANT to Request No. 64643 now proprietor  
subject to the provisions and reservations  
contained in Crown Grant No. 126 and subject  
to such leases mortgages and encumbrances as  
are notified by memorial underwritten or endorsed  
hereon of that piece of land known as "Navitoka"  
(part of) and containing six hundred and sixty-four  
acres, one rood and thirty perches be the same  
a little more or less and situate in the  
Province of Rewa in the Island of Vitilevu and  
being Lot 1 on deposited plan No.2230 and shown

30

Exhibits in diagram hereon.

No.4  
Certificate  
of Title  
Shahbaz  
Khan  
12th April  
1957  
(continued)

IN WITNESS WHEREOF I have hereunto  
signed my name and affixed my seal, Suva 12th  
April, 1957.

LS. Sgd. B.L.Gregg  
Registrar of Titles.

No.667

CAVEAT

No.39837 Registered 20 Feb.1948 at 3.20 p.m.  
BY UJAGIR (f/n Rajkumar) and LAKSHMIJIT (f/n  
Bhai Suchit)

10

As to an area )  
of 70 acres )  
approximately ) Sgd. B.L.Gregg  
Registrar of Titles

CANCELLED by Application No. 102488  
Sgd. M.T.Khan Deputy Registrar of Titles

CAVEAT

No.41101 Registered 31 Aug. 1948 at 3.10 p.m.  
BY UJAGIR (f/n Rajkumar) and LAKSHMIJIT (f/n  
Bhai Suchit)

As to 138 acres 2 roods Sgd. B.L.Gregg  
Registrar of Titles

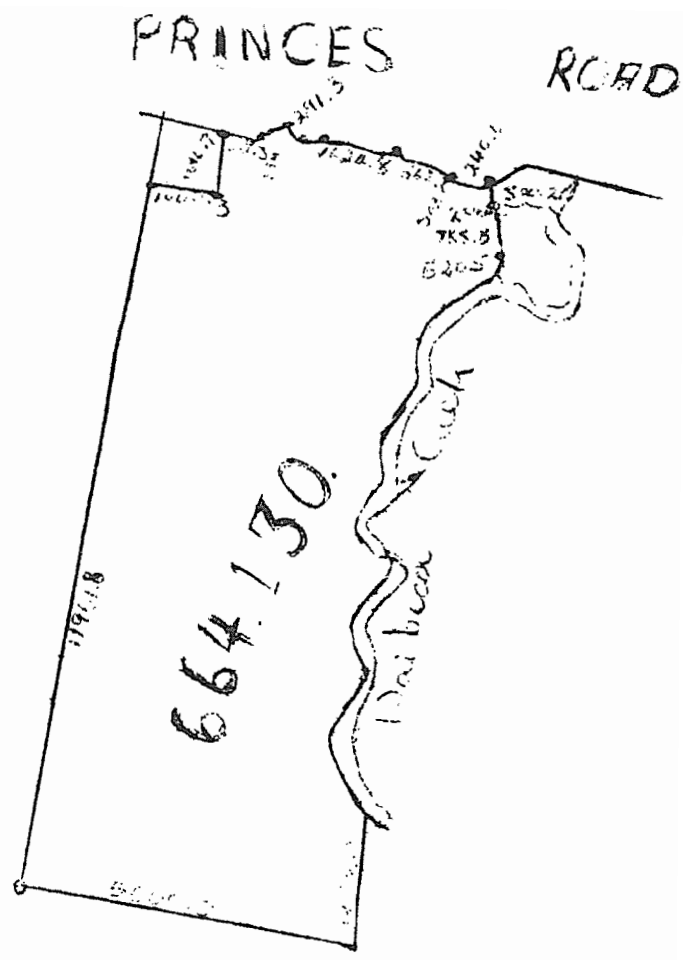
20

CANCELLED by Application No. 102488  
Sgd. T.M.Khan Deputy Registrar of Titles

ENCUMBRANCE

No.69915 Registered 28 Jan, 1959 at noon An  
Easement over that portion on DP.1561,40 links  
wide and shown coloured blue thereon, being  
part of the within land, for the benefit of Lot  
2 on D.P.1561.

Sgd. ?  
DEPUTY REGISTRAR OF TITLES 30



Scale 32 chains per inch. All measurements are in links.



FIRST SCHEDULE

Exhibits

Moneys owing under the said Agreement  
for Sale and Purchase dated the 16th  
day of February, 1948 :-

No.5  
Demand  
Notice  
17th  
September  
1960  
(continued)

balance purchase money (estimated  
subject to survey) £5610.0.0.

Interest thereon accrued to  
31.12.60 1433.12.5.

10 Further interest on £5610 per  
5% per annum from 31.12.60 to  
date of payment

£1714. 2.5

SECOND SCHEDULE

Moneys owing under the said Agreement  
for Sale and Purchase dated the 23rd  
August, 1948 :-

balance purchase money (estimated  
subject to survey) £6907.15.0

37.10.0

20 interest on arrears of instalments  
at  $2\frac{1}{2}\%$  per annum from due date of  
each instalments to 31.12.60

THIRD SCHEDULE

Loan moneys secured by the said  
Mortgages :-

balance principle sum £537.13.5

further interest on £537.13.5. at  
8% per annum from 31.12.59 to date  
of payment

30 The costs of preparation and service  
of this notice £ 5. 5.0

Exhibits

Shahbaz Khan -  
His left thumb mark.

No.5  
Demand  
Notice  
17th  
September  
1960  
(continued)

Witness to signature:

Sgd. S.Mohammed  
Solicitor,  
Suva.

No.6  
Demand  
Notice  
19th  
October  
1960

EXHIBIT No. 6

DEMAND NOTICE

IN THE MATTER of Mortgage No.44797 given by BHAI SUCHIT (f/n Rajkumar) of Suva Launch Driver as Mortgagor to SHAHBAZ KHAN (f/n Ado Khan) of Navitoka Naitasiri Landowner as Mortgagee AND Mortgage No.44798 given by LAKSHMI JIT, RANJIT and DHANJIT (all sons of Suchit) of Wainibokasi Rewa Cultivators as Mortgagors to the said Shahbaz Khan as Mortgagee.

10

AND IN THE MATTER of two certain Agreements for Sale and Purchase dated respectively the 16th day of February 1948 and the 23rd day of August 1948 made between the said Shahbaz Khan as Vendor and UJAGIR (f/n Rajkumar) of Wainibokasi aforesaid Fire Wood Dealer and the said LAKSHMIJIT alias LAKSHMIJITas Purchasers.

20

TO the abovenamed BHAI SUCHIT LAKSHMI JIT alias LAKSHMIJIT RANJIT DHANJIT and UJAGIR.

TAKE NOTICE that pursuant to my notice dated the 17th day of September, 1960 and default having been made by you in the payment of all moneys due by you to me, I intend, forthwith to apply to the Registrar General for a Foreclosure Order.

30

Dated the 17th day of October, 1960.

Shahbaz Khan His left thumb  
mark

Witness to Signature:  
Sgd. S. Mohammed,  
S. Mohammed,  
Solicitor,  
SUVA

Exhibits

\_\_\_\_\_  
No.6  
Demand  
Notice  
19th  
October  
1960  
(continued)

EXHIBIT No. 7

CAVEAT

No.7  
Caveat  
6th  
February  
1968

F I J I No. 103268

C A V E A T

10 Forbidding Registration of Dealing  
with Land

RULE UP ALL BLANKS BEFORE SIGNING. NO  
ALTERATIONS SHOULD BE MADE BY ERASURE. THE  
WORDS REJECTED SHOULD BE SCORED THROUGH WITH A  
PEN AND THOSE SUBSTITUTED WRITTEN OVER THEM,  
THE ALTERATION BEING VERIFIED BY SIGNATURE OR  
INITIALS IN THE MARGIN OR NOTICED IN THE  
ATTESTATION. ALL NAMES MUST BE TYPED OR PRINTED.

20 TO THE REGISTRAR OF TITLES. 6 Feb 68 107890  
RF A -----17.6

TAKE NOTICE that I LAKSHMIJIT Father's name  
Bhai Suchit of Suva in the Colony of Fiji, Clerk  
claiming an estate or interest as Purchaser by  
virtue of Memorandum of Agreement dated 16th  
February, 1948, 23rd August, 1948, Deed 24th  
of September, 1952, 28th July, 1954 and letter  
dated 10th May, 1961 (addressed to me)

in the land described as follows :-





(FOR OFFICE USE)

Exhibits

CAVEAT NO. 103268

Registered - 6 Feb 1968 at 10 a.m.

LS. Sgd. M.T.Khan  
Deputy Registrar of Titles

Fees Paid.

Lodged by: DAVENDRA PATHIK,  
SOLICITORS,  
35 Waimanu Road  
Suva

10

Dated 6.2.68 10 a.m.

CERTIFIED TRUE COPY

LS. Sgd. ?  
DEPUTY REGISTRAR OF TITLES  
16.10.70

MEMORANDUM OF MORTGAGES AND  
ENCUMBRANCES, ETC.

Encumbrance 69915. Charge 101929

20 Correct for the purposes of the Land (Transfer  
and Registration) Ordinance (Cap.136)

(Sgd) Devendra Pathik  
Solicitor for the Caveator

No.7  
Caveat  
6th  
February  
1968  
(continued)

Exhibits

EXHIBIT No. 8

AGREEMENT FOR SALE

No.8  
Agreement  
for Sale  
23rd  
August 1948

Fiji  
DUTY PAID  
5/-

4633

DUPLICATE ORIGINAL  
STAMPED With £34.10.0.

MEMORANDUM OF AGREEMENT made the 23rd day of August 1948 BETWEEN SHAHBAZ KHAN (Father's name Ado Khan) of Navitoka in the Province of Naitasiri Landowner (hereinafter called "the vendor") of the one part and UJAGIR (Father's name Rajkumar) of Wainibokasi in the District of Rewa Firewood Dealer and LAKSHMIJIT (Father's name Bhaisuchit) of Wainibokasi aforesaid Cultivator (hereinafter called "the purchasers") of the other part

10

WHEREBY IT IS AGREED as follows :-

1. THE Vendor will sell to the purchasers who will purchase the freehold estate and interest of the vendor in all that piece of land situate in the District of Rewa in the Island of Vitilevu containing 138½ (one hundred and thirty-eight and a half) acres more or less subject to survey as hereinafter provided known as "Navitoka" (part of) being part of the land comprised and described in Certificate of Title No. 7319 which said piece of land is approximately delineated in the plan endorsed hereon and therein edged red at and for the price of £50.0.0. (Fifty pounds) per acre which shall be paid and satisfied by the purchasers in the manner following :-

20

SD.

30

(a) By payment of the sum of £173.0.0. as a deposit and in part payment of the said purchase price as follows :-

(i) the sum of £17.5.0. upon the execution hereof (the receipt whereof the vendor hereby acknowledges)

(ii) the sum of £51.15.0. by three

payments of £17.5.0. each on the last days of November 1948, February 1949 and May 1949 and

(iii) the further sum of £104.0.0. by four payments of £26.0.0. each on the last days of August and November 1949 and February and May 1950.

10 (b) The balance of the said purchase price estimated (subject to survey as aforesaid) to be £6752.0.0. shall be paid by equal ~~yearly~~ quarterly instalments of £32.0.0. each on the last day of each of the months of August November February and May in each year until the whole of the said purchase price shall be paid in full the first such instalment falling due on the 31st day of August 1950.

20 2. IF the purchasers shall make default in the payment on the due date thereof of any instalment of purchase money as aforesaid the vendor shall (without prejudice to any of his other rights powers and remedies hereunder) be entitled to charge receive and recover from the purchasers interest at the rate of £2.10.0. per centum per annum calculated upon the amount of every such instalment so overdue and computed from the due date of such instalment until the date of payment thereof such interest being payable as a first deduction from all moneys next paid to the vendor hereunder until all interest accrued due as aforesaid shall have been paid.

30 3. THE purchasers shall be at liberty on any of the days hereinbefore appointed for the payment of purchase moneys without notice to pay off the whole or any part of the said balance purchase moneys then remaining owing hereunder Provided however that any payments made under this Clause shall not effect the continuity of the payments provided for in Clause 1 hereof.

40 4. POSSESSION of the land hereby agreed to be sold shall be given and taken on the date of

Exhibits

\_\_\_\_\_

No.8  
Agreement  
for Sale  
23rd  
August  
1948  
(continued)

SD.

Lakshmijit  
Ujagir  
L.T.M.  
Shahbaz  
Khan

S.D.



property is believed and shall be taken to be correctly described and no error omission or misdescription of the said land shall invalidate this contract nor be the subject of compensation by either party save such adjustment of the total purchase price as may be found necessary upon ascertainment of the surveyed area of the said land.

Exhibits

\_\_\_\_\_  
No. 8  
Agreement  
for Sale  
23rd  
August  
1948

(continued)

10 8. THE purchasers will as from the date hereof and so long as any moneys shall remain owing hereunder duly and punctually pay and discharge all rates taxes (including any land tax) charges impositions and other outgoings whatsoever levied charged or imposed on the land hereby agreed to be sold or on the owner or occupier in respect thereof and will keep the vendor indemnified in respect thereof and will comply with the provisions of all  
20 ordinances and regulations relating to public health and the eradication or control of noxious weeds and otherwise affecting the said land and the use and occupation thereof

9. THE purchasers will so long as any moneys shall remain owing hereunder to the vendor plant farm cultivate manage and use the said land in a proper and husbandmanlike manner and will not impoverish or waste the same.

30 10. THE purchasers will forthwith erect and thereafter maintain to the reasonable satisfaction of the vendor upon all boundaries of the land hereby agreed to be sold (other than along the bank of the creek shown in the plan endorsed hereon) a cattle-proof fence of stout timber posts with four strands of barbed-wire well strained AND it is expressly agreed and declared that the vendor shall not  
40 at any time hereafter be liable or be called upon to fence or to contribute towards the cost of erecting or maintaining any fence upon the boundaries of the land hereby agreed to be sold for any purpose whatsoever.

11. WHILST any purchase or other moneys shall remain owing to the vendor under either this

Exhibits  
-----  
No.8  
Agreement  
for Sale  
23rd  
August  
1948  
(continued)

Agreement or the Agreement for Sale and Purchase dated the 16th day of February 1948 made between the parties hereto relating to adjoining land the purchasers will provide free grazing for six (6) head of stock owned by the vendor.

12. THE purchasers shall not while any moneys remain owing to the vendor hereunder cut fell injure or destroy any fruit trees or trees protected by law or any timber or timberlike trees now and hereafter growing on the said land Provided however that the purchasers may cut from the said land such firewood as may be required by them for their personal domestic requirements upon the said land and such fence-posts as may be required for fencing the said land and repairing the fences thereon. No timber firewood fence-posts or other forest produce shall be removed sold or otherwise disposed of from the said land by the purchasers. 10  
20

13. THE vendor shall be entitled while any moneys remain owing to him hereunder to cut fell and remove from the said land firewood and other timbers for his own use and for such purpose to enter thereon at all reasonable times with workmen implements horses bullocks and vehicles.

14. IT is agreed and declared that the vendor shall not be held to be responsible in any way for the trespass upon the said land of any wild cattle which may enter the said land from any adjoining land owned by the vendor. 30

15. WHILE any moneys shall remain owing hereunder to the vendor the purchasers will whenever required by the vendor by notice in writing so to do execute and give at the purchasers' expense in favour of the vendor a valid first Bill of Sale over all livestock natural increase of livestock machines machinery implements utensils chattels and other things whatsoever of the purchasers then and thereafter upon or about the said land to 40



Exhibits  

---

No.8  
Agreement  
for Sale  
23rd  
August  
1948  
(continued)

under this Agreement shall be deemed to be a default under the said Agreement for Sale and Purchase dated the 16th day of February 1948 and any default by the purchasers in the payment of any moneys under the letter Agreement shall be deemed to be also a default under this Agreement and the Vendor may upon any such default hereunder or thereunder exercise his rights powers and remedies both thereunder and hereunder either together or separately and in such order as he may think fit. 10

21. TIME shall be of the essence of this Agreement.

22. IF any of the aforesaid instalments of purchase money or any interest thereon as aforesaid shall be in arrear and unpaid for more than twenty-one (21) days after the due date thereof or if the purchasers shall make default in the performance or observance of any other stipulation or agreement on the part of the purchasers herein 20 contained and if such default shall continue for the space of twenty-one days then and in any such case the vendor without prejudice to his other rights and remedies hereunder may at his option exercise any of the following remedies namely :-

- (a) May enforce this present contract in which case the whole of the purchase money and interest then unpaid shall become due and at once payable or 30
- (b) May rescind this contract of sale and thereupon all moneys theretofore paid shall be forfeited to the vendor as liquidated damages and
  - (i) May re-enter upon and take possession of the said land hereby agreed to be sold and all improvements thereon without the necessity of giving any notice or making any formal demand and
  - (ii) May at the option of the vendor 40 re-sell the said land and improvements



10 either by public auction or private contract subject to such stipulations as he may think fit and any deficiency in price which may result on and all expenses attending a re-sale or attempted re-sale shall be made good by the purchasers and shall be recoverable by the vendor as liquidated damages the purchasers receiving credit for any payments made in reduction of the purchase moneys. Any increase in price on re-sale after deduction of expenses shall belong to the vendor.

23. THE costs of and incidental to this Agreement shall be borne and paid by the purchasers.

20 24. THE expression "the vendor" and "the purchasers" where used herein shall except where the context requires a different construction respectively mean include and bind the vendor and the purchasers and their respective executors administrators and assigns.

AS WITNESS the hands of the parties.

SIGNED by the said SHAHBAZ )  
KHAN as vendor in the ) Thumb mark of  
presence of :- ) Shahbaz Khan

Sgd. S.Deo  
Clerk, Suva

30 SIGNED by the said UJAGIR )  
and LAKSHMIJIT as ) Sgd. Ujagir  
purchasers in the presence ) " Lakshmijit  
of :- )

Sgd. S.Deo  
Clerk, Suva.

Exhibits

EXHIBIT No. 9

DEED OF EXTENSION OF TIME

No.9  
Deed of  
Extension  
of time  
24th  
September  
1952

DUTY PAID  
£1.0.0.  
7970

THIS DEED is made the 24th day of September 1952  
BETWEEN BHAI SUCHIT (Father's name Rajkumar)  
of Suva Painter.... UJAGIR (Father's name  
Rajkumar) of Wainibokasi Rewa Cultivator  
LAKSHMIJIT alias LUXMIJIT alias LAKHMI JIT  
(Father's name Bhai Suchit) of Wainibokasi  
aforesaid Cultivator RANJIT (Father's name Bhai  
Suchit) of Suva Cultivator and DHANJIT  
(Father's name Bhai Suchit of Wainibokasi  
aforesaid Cultivator (hereinafter with their  
respective executors administrators and assigns  
referred to as and included in the term "the  
Mortgagors") of the one part AND SHAHBAZ KHAN  
(Father's name Ado Khan) of Navitoka in the  
Province of Naitasiri Landowner (hereinafter  
with his executors administrators and assigns  
referred to as and included in the term "the  
Mortgagee") of the other part

10

20

WHEREAS the Mortgagors are presently  
indebted to the Mortgagee for purchase moneys  
principal further advances interest and other  
moneys under and by virtue of the several  
documents described in the Schedule hereto

AND WHEREAS default having been made by  
the Mortgagors in the payment to the Mortgagee  
of certain instalments of purchase money  
principal and interest under the said documents  
the Mortgagee has made due and proper demand  
upon the said Bhai Suchit Lakshmijit Ranjit and  
Dhanjit for the payment of all the moneys  
secured by Mortgages No.35678 35684 and 44796  
and Bill of Sale Book 46 Folio 128

30

AND WHEREAS the Mortgagors have requested  
the Mortgagee to grant to the Mortgagors

further time for payment of the moneys owing by them to the Mortgagee under the documents described in the said Schedule and to grant to the Mortgagors the further indulgences hereinafter set out which the Mortgagee has agreed to do upon and subject to the terms and condition hereinafter appearing

Exhibits

No.9  
Deed of  
Extension  
of time  
24th  
September  
1952

(continued)

NOW THIS DEED WITNESSETH as follows :-

- 10 1. The Mortgagors hereby admit and acknowledge that there are now owing by them to the Mortgagee the moneys stated in the said Schedule
- 20 2. The said Ujagir and Lakshmijit hereby admit and acknowledge that the provisions of Clause 2 of the Agreement for Sale and Purchase dated the 16th day of February 1948 first described in the said Schedule (hereinafter referred to as "the First Agreement") were fully understood and approved by them at the time they signed the First Agreement and they hereby unreservedly ratify and confirm the said Clause 2
- 30 3. The Mortgagors hereby admit and acknowledge that the four Statements of Account dated the 23rd day of January 1952 furnished by the Mortgagee to the Mortgagors and showing the position of all matters of account between the parties hereto under the documents described in the said Schedule on the 31st day of December 1951 are true and correct
- 40 4. The said Bhai Suchit and Ujagir will contemporaneously with the execution hereof sign and deliver to the Mortgagee by way of additional security a form of absolute and irrevocable Assignment to the Mortgagee of the sum of ₹624.0.0. to be paid to the Mortgagee out of the proceeds of all or any sugar cane to be harvested and sold to the Colonial Sugar Refining Company Limited during the 1954 Crushing Season from the lands described in Native Leases Nos. 729 2662 and 4251 and

L.T.M.  
S.Khan  
U.  
L.  
B.S.  
R.  
D.  
S.D.

L.T.M.  
S.Khan  
S.D.  
U.  
L.  
B.S.  
R.  
D.

Exhibits L.T.M. Crown Lease No.006. AND the said Bhai Suchit  
S.Khan and Ujagir hereby covenant with the Mortgagee  
L. that they have not given nor will they or  
No.9 U. either of them hereafter give to any person  
Deed of B.S. other than the Mortgagee any crop lien charge  
Extension R. order or assignment affecting the crop or  
of time D. crops of sugar cane to be grown on the said  
24th S.D. lands and harvested in the 1954 Crushing  
September Season or any of the proceeds thereof and that  
1952 they will in due season cultivate and plant 10  
(continued) with sugar cane so much of the said lands as  
may with the approval of the said Company be  
planted during the 1953 Planting Season and  
will properly tend and cultivate and in due  
season harvest the said crops and sell the  
same to the said Company to the intent that  
the said sum of £624.0.0. shall in due course  
be paid to the Mortgagee pursuant to the  
said Assignment

5. It is agreed and declared that all moneys 20  
received by the Mortgagee under the said  
Assignment shall so far as the same will  
extend be applied in the following manner:-

- (a) First in or towards payment of  
interest owing under the two  
Agreements for Sale and Purchase  
described in the said Schedule and
- (b) Secondly in or towards payment of  
arrears of instalments of purchase  
moneys then due under the said 30  
Agreements for Sale and Purchase

6. The said Bhai Suchit hereby agreed with  
the Mortgagee that all rent now and hereafter  
payable under Lease No.47311 granted to  
Willie Sing Lee affecting the land comprised  
in Certificate of Title No.5477 shall be  
paid to the Mortgagee or his agents whose  
receipt should be a full discharge and who  
after deducting all expenses of collection  
shall apply the net amount of such rents 40  
towards the monthly instalments of not less  
than £25.0.0. mentioned in paragraph (b)  
of the next succeeding Clause 7 hereof.

7. In consideration of the foregoing provisions hereof the Mortgagee agrees with the Mortgagors as follows :-

Exhibits

- (a) The Mortgagee will not for the period of one month after the date of execution hereof take any steps to enforce payment of any of the moneys payable to him under any of the documents described in the said Schedule and
- 10 (b) The Mortgagee will as from the date hereof accept monthly instalments of not less than £25.0.0. in lieu of the monthly instalments of £30.0.0. stipulated in Clause 2 of each of Mortgages Nos. 44797 and 44798 described in the said Schedule.
- (c) The Mortgagee will not debit or charge any further interest under Clause 2 of the First Agreement for the period between the date of these presents and the 31st day of December 1954 after which date the Mortgagee shall be at liberty to charge interest as provided in the said Clause 2
- 20

No.9  
Deed of  
Extension  
of time  
24th  
September  
1952  
(continued)

8. It is expressly agreed and declared that the aforesaid monthly instalments of not less than £25.0.0. shall be applied in the following manner so far as they will extend :-

- (a) First in payment of all costs of collection or of enforcing payment thereof
- 30 (b) Secondly in or towards payment of any interest accrued due under any of the Mortgages described in the said Schedule
- (c) Thirdly in or towards payment of any interest accrued due under the Agreement for Sale and Purchase described in the said Schedule and
- (d) Fourthly in or towards payment of the principal moneys owing under the said Mortgages Nos. 44797 and 44798

Exhibits

            
No.9

Deed of  
Extension  
of time  
24th  
September  
1952  
(continued)

9. It is further agreed and declared that nothing in these presents expressed or implied shall be deemed to prejudice or affect in any way whatsoever the rights powers and remedies of the Mortgagee under or by virtue of any of the documents described in the said Schedule in respect of any past present or future default of the Mortgagors or any of them save and except as provided in paragraph (a) of Clause 7 of these presents.

10

10. The Mortgagors will pay all costs and expenses of and incidental to the negotiations in respect of the matters set out in these presents and of the preparation completion and stamping of these presents and of the said Assignment

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written

THE SCHEDULE

Exhibits

<u>Document</u>	<u>Date or Number</u>	<u>Parties</u>	<u>Moneys Owing Thereunder or Secured Thereby</u>	<u>No.9</u>
Agreement for Sale & Purchase	16.2.48	Vendor:The Mortgagee Purchasers: The said Ujagir & Lakshmijit	Balance purchase money: £5610.0.0 Interest accrued to 31.12.51 £ 293.12.7	Deed of Extension of time 24th September 1952 (continued)
Agreement for Sale & Purchase	23.8.48	Vendor:The Mortgagee Purchasers: The said Ujagir & Lakshmijit	Balance purchase money: £6907.15.0 Interest accrued to 31.12.51 £ 12. 3.1	
Mortgage	35678	Mortgagor: Bhai Suchit Mortgagee: The Mortgagee	Balance principal sum: £1729. 4.9 Interest accrued to 31st August 1952 £ 345.14.5	
Mortgage	35684	Mortgagors: The said Lakshmijit & Ranjit Mortgagee: The Mortgagee	The same as secured by Mortgage No.35678 to which this Mortgage is collateral	
Mortgage	44796	Mortgagor: The said Dhanjit Mortgagee: The Mortgagee	The same as secured by Mortgage No.35678 to which this Mortgage is collateral	
Bill of Sale (Expired)	46/128	Mortgagor: The said Lakshmijit Mortgagee: The Mortgagee (by assignment)	The same as secured by Mortgage No.35678 to which this Mortgage is collateral	

<u>Exhibits</u>	<u>Document</u>	<u>Date or Number</u>	<u>Parties</u>	<u>Moneys Owing Thereunder or Secured Thereby</u>
No.9 Deed of Extension of time 24th September 1952 (continued)	Mortgage	44797	Mortgagor: The said Bhai Suchit Mortgagee: The Mortg- agee	Principal moneys: £565. 8. 0 Interest accrued to 31st August 1952 £ 1. 8. 8 Together with all purchase moneys interest and other moneys payable under the aforesaid two Agreements for Sale and Purchase
	Mortgage	44798	Mortgagors: The said Lakshmijit Ranjit and Dhanjit Mortgagee: The Mortg- agee	The same as secured by Mortgage No.44797 to which this Mortgage is collateral
	Crop Lien (Expired)	50/229	Lienors: The said Bhai Suchit and Ujagir Lienee: The Mortg- agee	The same as secured by Mortgage No.44797 to which this Crop Lien is collateral
	Bill of Sale Renewal	45/448 891/50	Mortgagor: The said Bhai Suchit Mortgagee: The Mortg- agee	Balance principal: £80.0.0 (Being part of the aforesaid principal moneys secured by Mortgages Nos. 44797 & 44798 & Crop Lien No.50/229)

SIGNED SEALED AND DELIVERED by the said BHAI } Bhai Suchit  
SUCHIT UJAGIR LAKSHMIJIT RANJIT and } Ujagir  
DHANJIT as Mortgagors after the contents } Lakshmijit  
hereof had been read over and explained to } Ranjit  
them in the Hindustani language when they }  
appeared fully to understand the meaning and } Dhanjit  
effect thereof: }

Law Clerk  
Suva



SIGNED SEALED AND DELIVERED )  
by the said SHAHBAZ KHAN as )  
Mortgagee after the contents )  
hereof had been read over an )  
and explained to him in the )  
Hindustani language when he )  
appeared fully to understand )  
the meaning and effect )  
thereof: )

SHAHBAZ KHAN

His left thumb mark.  
L.S.

Exhibits

No.9  
Deed of  
Extension  
of time  
24th  
September  
1952

(continued)

10 Signed. S.Deo  
Law Clerk,  
Suva.

EXHIBIT No.10

PROBATE, SHAHBAZ KHAN

No.10  
Probate,  
Shahbaz  
Khan  
5th January  
1967

IN THE SUPREME COURT OF FIJI

LS.

PROBATE JURISDICTION

No.9715

20

In the Estate of SHAHBAZ KHAN  
son of Ado Khan late of  
Navitoko in the district of  
Naitasiri in the Colony of  
Fiji, Landlord, Deceased.

£68,639.16.6

30

BE IT KNOWN that on the 5th day of January, 1967 letters of administration (with the will annexed) of all the estate which by law devolves to and vests in the personal representatives of SHAHBAZ KHAN son of Ado Khan late of Navitoko in the district of Naitasiri in the Colony aforesaid deceased who died on the 29th day of May, 1964 at Navitoko aforesaid having made and duly executed last will and testament (a copy whereof is hereunto annexed) were granted by Her Majesty's Supreme Court of Fiji to FAIZ MOHAMMED KHAN SHERANI son of Din Mohammed Khan Sherani of 23 Narain Place, Tamavua, Suva in the Colony of Fiji, Solicitor ---- he having been first

Exhibits

sworn well and faithfully to administer the same,  
subject to the conditions endorsed hereon.

No.10  
Probate,  
Shahbaz  
Khan  
5th January  
1967  
(continued)

LS. Sgd. I.R.Thompson  
(I.R.Thompson)  
Chief Registrar.

Extracted by: MESSRS. SHERANI & CO  
SOLICITORS,  
SUVA.

THIS IS THE LAST WILL AND TESTAMENT of me  
SHAHBAZ KHAN son of ADO KHAN of Sawani, in the 10  
Colony of Fiji, Landlord I HEREBY REVOKE all  
former wills and testamentary dispositions  
heretofore made by me and DECLARE this to be my  
last WILL AND TESTAMENT I APPOINT my wife  
BACHWAN daughter of BHAGWANDIN to be the Executrix  
of this my Will I DECLARE that I have considered  
all the claimants to my estate and have refrained  
from making any provisions therefor I desire  
that Messrs. Sherani & Co., Solicitors, shall be 20  
employed as Solicitors in proving my will and in  
transacting any legal business in the execution  
and administration of my estate I GIVE DEVISE  
AND BEQUEATH the whole of my property both real  
and personal of whatsoever nature and kind and  
wheresoever situate unto my said wife BACHWAN  
for her use and benefit for her life and thereafter  
I DIRECT that my wife shall leave all the residue  
and remainder of my estate to such of my  
relations as she shall be advised by my 30  
Solicitors Messrs. Sherani & Co. after they have  
made full and proper enquiries and investigations.

IN WITNESS whereof I have hereunto set my  
hand this 27th day of September One thousand  
nine hundred and sixty three.

L.T.M. of Shahbaz Khan

SIGNED by the Testator SHAHBAZ KHAN by attesting  
his left thumb mark as his last will and testament  
in the presence of us both present at the same  
time who at his request and in his sight and  
presence and in the presence of each other have 40

hereunto subscribed our names as attesting witnesses and we certify that before the foregoing will was signed by the testator it was read over and explained to the testator in the Hindustani language when he appeared fully to understand the meaning and effect thereof:

Sgd. P.C.Metha  
Medical Practitioner

Sgd. M.H.Khan  
Clerk, Suva

Exhibits

\_\_\_\_\_  
No.10  
Probate,  
Shahbaz  
Khan  
5th January  
1967  
(continued)

10 This is the Last Will and Testament of Shahbaz Khan deceased referred to in the annexed affidavit of Bachwan widow of Shahbaz Khan deceased sworn before me at Suva the 29th day of June 1964

Sgd. Davendra Pathik  
A Commissioner etc.

L.T.M. of Bachwan

CONDITIONS

1. There shall be no sale of Real Property without the leave of the Supreme Court of Fiji
- 20 2. There shall be no distribution of assets to the beneficiaries without the leave of the Supreme Court of Fiji
3. Accounts shall be filed in the Supreme Court of Fiji before the distribution of assets to the beneficiaries.

Exhibits

EXHIBIT No.11

No.11  
Affidavit  
of Service  
of Demand  
Notice  
28th April  
1964

AFFIDAVIT OF SERVICE  
OF DEMAND NOTICE

IN THE MATTER of Mortgage No. 44797 given by BHAI SUCHIT (f/n Raj Kumar) of Suva, Launch Driver as Mortgagor to SHAHBAZ KHAN (f/n Ado Khan) of Navitoka, Naitasiri, Land Owner as Mortgagee AND Mortgage No.44798 given by LAKAMI JIT, RANJIT and DHANJIT (all sons of Suchit) of Wainibokasi Rewa, Cultivators as Mortgagors to the said SHAHBAZ KHAN as Mortgagee 10

AND

IN THE MATTER of two certain Agreements for Sale and Purchase dated respectively the 16th day of February, 1948 and the 23rd day of August, 1948 made between the said SHAHBAZ KHAN as Vendor and UJAGIR (f/n Raj Kumar) of Wainibokasi aforesaid Fire Wood Dealer and the said LAKAMI JIT alias LAKSHMI JIT as Purchasers. 20

AFFIDAVIT OF SERVICE

I, SHAUKAT ALI of Nausori, Clerk make oath and say as follows :-

1. I did on the 2nd day of April, 1964 at Wainibokasi and Sawani personally serve DHANJIT and LAKSHMI JIT respectively with the true copy of the attached demand notice which was dated the 9th day of January, 1964. A copy of the said Notice is attached herewith and marked with letter "A". 30

2. At the time of the said service the said Notice and the copy thereof were subscribed in the manner and form prescribed by the rules of the Registrar General.

SWORN by the said SHAIKAT ALI )  
at Suva this 28th day of ) Sgd. S.Ali  
April 1964 )

Before me:

4/- stamp cancelled

10

Sgd. Devendra Pathik  
A Commissioner of Oaths.

"A"

20

IN THE MATTER of Mortgage No.44797 given by BHAI SUCHIT (f/n Rajkumar) of Suva, Launch Driver, as Mortgagor to SHAHBAZ KHAN (f/n Ado Khan) of Navitoka, Naitasiri, Land-owner as Mortgagee AND Mortgage No. 44798 given by LAKHMI JIT RANJIT and DHANJIT (all sons of Suchit) of Wainibokasi Rewa, Cultivators as Mortgagors to the said SHAHBAZ KHAN as Mortgagee

AND IN THE MATTER of two certain Agreements for Sale and Purchase dated respectively the 16th day of February 1948 and the 23rd day of August 1948 made between the said Shahbaz Khan as Vendor and UJAGIR (f/n Rajkumar) of Wainibokasi aforesaid Fire Wood Dealer and the said LAKHMI JIT alias LAKSHMIJIT as Purchasers.

TO: The abovenamed BHAI SUCHIT, LAKHMI JIT alias LAKSHMIJIT DHANJIT and UJAGIR

30

TAKE NOTICE, that default having been made by you the said LAKSHMIJIT and UJAGIR in the payment of numerous instalments of purchase money due under each of the aforesaid Agreements for Sale and Purchase you are hereby required to pay to the said SHAHBAZ KHAN at the office of Messrs. Sherani & Co., Solicitors, Waimanu Road,

Exhibits

\_\_\_\_\_  
No.11  
Affidavit  
of Service  
of Demand  
Notice  
28th April  
1964  
(continued)

Exhibits  

---

No. 11  
Affidavit  
of Service  
of Demand  
Notice  
28th April  
1964  
(continued)

This is the Demand Notice marked "A" referred to in the annexed affidavit of SHAIKAT ALI sworn before me this 28th day of April, 1964  
Sgd. Devendra Pathik - A Commissioner for Oaths

Suva, within one month after the date of the service of this notice upon you the moneys mentioned in the First and Second Schedule hereto

AND TAKE NOTICE that default having been made by you the said BHAI SUCHIT, LAKHMI JIT RANJIT and DHANJIT in the payment of the moneys due and owing under the secured by the said Mortgages Nos. 44797 and 44798 including the aforesaid instalments of purchase money due under the aforesaid Agreements, you are hereby required to pay to the said SHAHBAZ KHAN at the place and time appointed above the whole of the moneys mentioned in the First, Second and Third Schedule hereto AND FURTHER TAKE NOTICE that if payment be not made as aforesaid the said SHAHBAZ KHAN will proceed without further notice to exercise the rights powers and remedies (including power of sale) conferred on him by the said Mortgages and the said Agreements for Sale and Purchase and by law.

10

20

DATED the 9th day of January, 1964

L.T.M. of Bachwan as  
Attorney for Shahbaz Khan.

I hereby certify that I have read over and explained the contents hereof to the said BACHWAN in the Hindustani language and she appeared fully to understand the meaning and effect thereof before affixing her left thumb mark in my presence:

30

Sgd. M.H. Khan  
Clerk, Suva

FIRST SCHEDULE

Exhibits

Moneys owing under the said Agreement for Sale & Purchase dated 16th February 1948.

No.11  
Affidavit  
of Service  
of Demand  
Notice  
28th April  
1964  
(continued)

	Balance purchase money (estimated subject to service)	£5610. 0. 0	
	Interest thereon accrued to 31.12.60	1433.12. 5	
	Interest on £5610 at 5% p.a. from 31.12.60 to 31.1.64	<u>1145. 7. 6</u>	
10		£8188.19.11	
	Less paid		
	17.1.60	£5. 0. 0	
	17.9.60	20. 0. 0	
	1.3.60	20. 0. 0	
	20.4.60	<u>20. 0. 0</u>	
		<u>65. 0. 0</u>	
		£8123.19.11	

Further interest on £5610.0.0. at 5% p.a.  
from 1.2.64 to date of settlement

SECOND SCHEDULE

20 Moneys owing the said Agreement for Sale & Purchase dated 23.8.48

	Balance purchase money (estimated subject to survey)	£6907.15. 0	
	Interest on arrears of instal- ments at 2½% per annum from due date of each instalments to 31.12.60		

THIRD SCHEDULE

	Loan moneys secured by the said Mortgages		
30	Balance principal sum	£ 537.13. 5	
	Interest at 8% per annum on £537.13.5 from 31.12.59 to date of settlement.		

Exhibits

EXHIBIT NO.12

No.12  
Affidavit  
of Service  
of Demand  
Notice  
- March  
1967

AFFIDAVIT OF SERVICE  
OF DEMAND NOTICE

IN THE MATTER of Mortgage No.44797 given by BHAI SUCHIT (f/n Raj Kumar) of Suva, Launch Driver as Mortgagor to SHAHBAZ KHAN (f/n Ado Khan) of Navitoka, Naitasiri, Land Owner as Mortgagee and Mortgage No.44798 given by LAKAMI JIT, RANJIT and DHANJIT (all sons of Suchit) of Wainibokasi, Rewa Cultivators as Mortgagors to the said SHAHBAZ KHAN as Mortgagee.

10

AND

IN THE MATTER of two certain Agreements for sale and Purchase dated respectively the 16th day of February, 1948 and 23rd day of August, 1948 made between the said SHAHBAZ KHAN as Vendor and UJAGIR (f/n Raj Kumar) of Wainibokasi aforesaid Fire Wood Dealer and the said LAKAMI JIT alias LAKSHMIJIT as Purchasers.

20

I, HARI PRASAD father's name Ram Din of Sawani Nausori, in the Colony of Fiji, Driver make oath and say as follows :-

1. I did on the 2nd day of March, 1967 at Sawani, Nausori personally serve LAKSHMI JIT alias LAKSHMIJIT AND on the 3rd day of March 1967 at Wainibokasi, Nausori personally serve DHANJIT with the true copy of the Demand Notice which was dated the 2nd day of March 1967. A copy of the said Demand Notice is annexed hereto and marked with letter "A".
2. As the time of the said service the said Demand Notice and the copy thereof were subscribed in the manner and form

30



prescribed by the rules of the Registrar General.

Exhibits

SWORN by the said HARI PRASAD at Suva, this day of March 1967 and I certify that I read over and explained the contents hereof to him in the Hindustani language and he appeared fully to understand the meaning and effect of same before signing in my presence :

No.12  
Affidavit  
of Service  
of Demand  
Notice  
- March  
1967  
(continued)

10

.....

.....  
A Commissioner for Oaths.

"A"

IN THE MATTER of Mortgage No.44797 given by BHAI SUCHIT f/n Raj Kumar of Suva, Launch Driver, as Mortgagor to SHAHBAZ KHAN (f/n Ado Khan) of Navitoka, Naitasiri, Land-owner as Mortgagee AND Mortgage No.44798 given by LAKHMI JIT, RANJIT and DHANJIT (all sons of Suchit) of Wainibokasi Rewa, Cultivators as Mortgagors to the said SHAHBAZ KHAN as Mortgagee

20

AND IN THE MATTER of two certain Agreements for Sale and Purchase dated respectively the 16th day of February 1948 and the 23rd day of August 1948 made between the said Shahbaz Khan as Vendor and UJAGIR (f/n Rajkumar) of Wainibokasi aforesaid Fire Wood Dealer and the said LAKHMI JIT alias LAKSHMIJIT as Purchasers.

30

TO: The abovenamed BHAI SUCHIT, LAKHMI JIT alias LAKSHMIJIT DHANJIT and UJAGIR

TAKE NOTICE, that default having been made by you the said LAKSHMIJIT and UJAGIR in the payment of numerous instalments of purchase money due under each of the aforesaid Agreements for Sale and Purchase you are hereby required to pay to the

Exhibits  
No.12  
Affidavit  
of Service  
of Demand  
Notice  
- March  
1967  
(continued)

Estate of SHAHBAZ KHAN at the office of Messrs. Sherani & Co., Solicitors, Victoria Parade, Suva, within one month after the date of the service of this notice upon you the moneys mentioned in the First and Second Schedule hereto

AND TAKE NOTICE that default having been made by you the said BHAI SUCHIT, LAKHMI JIT, RANJIT and DHANJIT in the payment of the moneys due and owing under and secured by the said Mortgages Nos. 44797 and 44798, including the aforesaid instalments of purchase money due under the aforesaid Agreements, you are hereby required to pay to the Estate of SHAHBAZ KHAN at the place and time appointed above the whole of the moneys mentioned in the First, Second and Third Schedule hereto

10

AND FURTHER TAKE NOTICE that if payment be not made as aforesaid the Administrator of the Estate of SHAHBAZ KHAN will proceed without further notice to exercise the rights powers and remedies (including power or sale) conferred on him by the said Mortgages and the said Agreements for Sale and Purchase and by law.

20

DATED the 2nd day of March, 1967

Sgd. F.M.K. Sherani  
F.M.K. SHERANI  
ADMINISTRATOR OF THE ESTATE OF  
SHAHBAZ KHAN

This demand notice was issued from the offices of Messrs. Sherani & Co. of Victoria Parade, Suva, Solicitors for the Estate of Shahbaz Khan.

30

This is the Demand Notice marked "A" referred to in the annexed Affidavit of Hari Prasad s/o Ram Din sworn before me this            day of March 1961.

.....  
A COMMISSIONER FOR OATHS

FIRST SCHEDULE

Exhibits

Messrs. Ujagir & Lakshmijit

In account with the Estate  
of Shahbaz Khan, deceased,  
c/o Sherani & Co., Solicitors,  
Victoria Parade, Suva.

No.12  
Affidavit  
of Service  
of Demand  
Notice  
- March  
1967  
(continued)

Statement of Account - Agreement for  
Sale and Purchase dated 16th February  
1948 (Secured by Mortgages No.44797 and  
44798)

10

1948					
Feb.	16	To estimated purchase price subject to adjustment on survey	5760. 0. 0		
		By part payment of deposit	50. 0. 0		
Dec.	31	To interest to date	689.19. 2		
20	<u>1951</u>				
Jan	9	By cane proceeds applied to: Balance deposit instalment due 1.8.48	70. 0. 0  30. 0. 0		
Feb	1	To interest to date	23.18.10		
Nov	13	By cane proceeds applied to interest	8.12. 7		
"	"	"	25.12. 3		
30	"	"	438.13. 1		
	30	"	204.10. 0		
Dec	31	To interest to date	257. 2. 6		
	<u>1952</u>				
Dec	31				
	to				
1966					
Dec	31	To interest to date	4427.13. 9		
		By balance	10331. 6. 4		
			<hr/>		
			£11158.14. 3	£11158.14.3	

Exhibits  


---

No.12  
Affidavit  
of Service  
of Demand  
Notice  
- March  
1967  
(continued)

To balance owing:  
Balance purchase price £5760. 0. 0  
Balance interest to  
31st Dec. 1966 £5398.14. 3  
SHERANI & COMPANY  
: Per:  
.....  
Solicitors for the Estate of  
Shahbaz Khan

2nd SCHEDULE

M/S Ujagir & Lakshmijit In account with the 10  
Estate of Shahbaz Khan  
deceased c/o Sherani  
& Co., Solicitors,  
Victoria Parade, Suva

Statement of Account Agreement for  
Sale & Purchase dated 23rd August  
1948 - secured by Mortgages Nos.  
44797 and 44798

---

1951  
Dec. 31 Balance Purchase 20  
price £5610. 0.0  
Interest to date 293.12.7

1952  
May 14 By cane proceeds  
applied to interest 130.14.10  
Nov 5 " " " 10.16. 5  
Sep. 24 To interest to  
date 205.8.10  
Dec 31 " " " 74.14.8

1954 30  
Dec 31 " " " 561. 0.0

1959  
Dec 31 " " " 1402.10.0

	<u>1960</u>				Exhibits
	Jan	31	By Credit being surplus from sale of C.T.5477 as per attached statement of a/c	962. 2. 5	<u>No.12 Affidavit of Service of Demand Notice - March 1967 (continued)</u>
	<u>1960</u>				
	Dec.	31			
	to				
	<u>1966</u>				
10	Dec.	31	To interest Balance	1232.10.6 8276. 2.11	
				<u>£9379.16.7</u>	
				<u>£9379.16. 7</u>	

To balance owing :-

Balance purchase price	£5610. 0. 0
Interest to 31.12.66	£3769.16. 7

SHERANI & COMPANY

Solicitors for the Estate of Shahbaz Khan.

E. & O.E.

THIRD SCHEDULE

20 Messrs. Bhai Suchit, Lakshmijit, Dhanjit & Ranjit  
In account with SHAHBAZ KHAN,  
C/o MUNRO, WARREN, LEYS &  
KERMODE  
SOLICITORS,  
SUVA, FIJI.

Statement of Loan Account -  
Mortgages Nos. 44797 and 44798

<u>1950</u>			
Apl	6	To principal sum	£400. 0. 0.

Exhibits	<u>1951</u>				
<u>No.12</u>	Feb	28	To interest at 8%	£ 28.15. 3	
Affidavit of Service of Demand Notice - March 1967	Apl	20	To insurance premium paid	17.13. 6	
	Oct	4	To further advance	125. 0. 0	
	Dec	31	To interest to date	30. 1. 1	
(continued)			By net rent		£ 42.15. 0
	<u>1952</u>				
	Jan	23	By net rent		14. 5. 0
	Mar	8	To insurance premium paid	17.13. 6	
	July	10	By you		10. 0. 0
	Aug	5	" "		10. 0. 0
	"	22	To insurance premium paid	5. 1. 0	
	Sep	10	By you		10. 0. 0
	Oct	11	" "		10. 0. 0
	Dec	31	To interest to date	44.13. 7	
	<u>1953</u>				
	Jan	5	To interest to date	12. 5	
	"	"	By you		10. 0. 0
	Feb	12	To interest to date	4.13. 8	
			By you		10. 0. 0
			" , net rent		31.17. 0
	Apl	24	To insurance premium paid	17.13. 6	
	Aug	13	" " "	5. 1. 0	
	Dec	31	To interest to date	37.19.11	
	<u>1954</u>				
	Jan	25	By net rent		37.19.11
	Dec	31	To interest to date	43.16.11	

				Exhibits
<u>1955</u>				
Jan 31	By net rent		£ 42.15. 0	
Apl 23	To insurance premium paid	£ 17.13. 6		
	To interest to date	13.11. 6		
Dec 31	By net rent		42.15. 0	
	To interest to date	29. 9.11		
<u>1956</u>				
Dec 31	To interest to date	43. 2. 0		
<u>1957</u>				
May 23	By you		10. 0. 0	
Aug 2	" "		10. 0. 0	
Dec 31	To interest to date	43. 0. 2		
<u>1958</u>				
Dec 31	To interest to date	43. 0. 2		
<u>1958</u>				
Dec 31	" " "	43. 0. 2		
<u>1959</u>				
Dec 31	" " "	43. 0. 2		
<u>1960</u>				
Dec 31	" " "	43. 0. 2		
<u>1961</u>				
Dec 31	" " "	43. 0; 2		
<u>1962</u>				
Dec 31	" " "	43. 0. 2		
<u>1963</u>				
Dec 31	" " "	43. 0. 2		
<u>1964</u>				
Dec 31	" " "	43. 0. 2		
	C/F	£1269.13. 9	£292. 6.11	





EXHIBIT No.13

Exhibits

LETTER, SHERANI & CO. TO  
MESSRS. LAKSHMIJIT & UJAGIR

No.13  
Letter,  
Sherani & Co.  
to Messrs.  
Lakshmijit  
& Ujagir  
2nd March  
1967

FMKS/CR

2nd March, 1967

Messrs. Lakshmijit and Ujagir,  
Sawani,  
Nauscri.

Dear Sirs,

10 We refer to the Demand Notice served on  
you on 2nd March 1967. This is the third time  
such a Demand Notice has been served upon you.

20 Take Notice that unless you do pay up  
all the arrears of monies due by you within  
the time prescribed by the said Demand Notice  
dated 2nd March 1967 within thirty days from the  
said date your right and power under the  
Agreements for Sale and Purchase dated 16th  
February 1948 and 23rd August 1948 are hereby  
cancelled and rescinded and you are required to  
quit and give vacant possession of the land  
belonging to the Administrator of the Estate  
of Shahbaz Khan deceased now occupied by you  
or by anyone on your behalf.

TAKE NOTICE, that unless you either pay  
up the arrears, or quit and deliver vacant  
possession of the land now occupied by you at  
Navitoka being C.T.7064 (part of) an action  
for ejectment will be instituted.

30 TAKE FURTHER NOTICE that you are not to  
damage any fruit trees or fencing or any  
fixtures when vacating the premises in question.

Yours truly,  
SHERANI & CO.

Per:

.....

Exhibits

EXHIBIT No. 14

No.14  
Letter,  
Sherani & Co.  
to

LETTER, SHERANI & CO. TO  
ADMINISTRATOR ESTATE OF  
UJAGIR AND LAKSHMIJIT

Administrator FMKS/CR  
Estate of  
Ujagir and  
Lakshmijit  
3rd April  
1967

3rd April 1967

The Administrator of the  
Estate of Ujagir,  
and Lakshmijit s/o  
Bhai Suchit,  
Navitoko,  
SAWANI.

10

Dear Sir,

re: C.T. 7064

We refer to the demands made upon you to pay up the balance due by you to the Administrator of the Estate of Shahbaz Khan deceased under the Agreements dated 10th February 1948 and 23rd August 1948.

Take Notice that the Agreement dated 16th February, 1948 made between you and Shahbaz Khan to sell to you 72 acres of land is determined for reasons, amongst the many others, for non-payment of your debts. All monies paid by you or your agent in this matter is forfeited to the Administrator of the Estate of Shahbaz Khan, deceased.

20

Take Further Notice that the Memorandum of Agreement dated 23rd August 1948 made between you and Shahbaz Khan to sell to you 138½ acres of land is determined for reasons, amongst the many others, for non-payment of your debts. All the monies paid by you or your agent in this matter is forfeited to the Administrator of the Estate of Shahbaz Khan deceased.

30

Take Further Notice that in accordance with the Agreements mentioned hereabove you are



Exhibits

MORTGAGEE'S SALE

No.15  
Extract  
from  
"Fiji  
Times"  
8th June  
1968  
(continued)

Written tenders closing at noon on June 24,  
1968, addressed to the undersigned are invited  
for the sale of C.T. No.5349 in Waimanu Road  
belonging to Dhanjit (f/n Suchit). The highest  
or any tender will not necessarily be accepted.

SHERANI & COMPANY  
SOLICITORS, SUVA. 3.20.

No.16  
Extract  
from "Fiji  
Times"  
3rd June  
1968

EXHIBIT No. 16

EXTRACT FROM "FIJI TIMES"

10

MORTGAGEE'S SALE

Written tenders closing at noon on June 24,  
1968, addressed to the undersigned are invited  
for the Sale of C.T. No.5425 situated at  
Waimanu Road belonging to Bhai Suchit f/n  
Raj Kumar. The highest or any tender will not  
necessarily be accepted.

SHERANI & COMPANY  
SOLICITORS,  
SUVA 3.19. 20

MORTGAGEE'S SALE

Written tenders closing at noon on June 24,  
1968 addressed to the undersigned are invited  
for the sale of C.T. No.5349 in Waimanu Road,  
belonging to Dhanjit f/n Bhai Suchit. The  
highest or any tender will not necessarily be  
accepted.

SHERANI & COMPANY  
SOLICITORS, SUVA. 3.20.

EXHIBIT No. 17

Exhibits

EXTRACT FROM "FIJI TIMES"

\_\_\_\_\_  
No.17  
Extract  
from "Fiji  
Times"  
8th June  
1968

\_\_\_\_\_  
MORTGAGEE'S SALE

Written tenders closing at noon on June 24, 1968 addressed the undersigned are invited for the Sale of C.T. No. 5425 situated in Waimanu Road belonging to Bhai Suchit f/n Rajkumar. The highest or any tender will not necessarily be accepted.

10

SHERANI & COMPANY  
SOLICITORS  
SUVA. 3.19.

MORTGAGEE'S SALE

Written tenders closing at noon on June 24, 1968 addressed to the undersigned are invited for the sale of C.T. No. 5349 in Waimanu Road belonging to Dhanjit f/n Suchit. The highest or any tender will not necessarily be accepted.

20

SHERANI & COMPANY  
SOLICITORS,  
SUVA. 3.20.

Exhibits

EXHIBIT No. 19

ACCOUNTS, SHAHBAZ KHAN

No. 19  
Accounts,  
Shahbaz Khan  
16th  
February  
1948 to  
31st  
January  
1960

Messrs. Bhai Suchit, Lakhmi Jit, Ranjit & Dhanjit

In account with Shahbaz Khan,  
c/o Munro, Warren, Leys & Kermode,  
Solicitors,  
SUVA, FIJI.

Account of Sale of C.T.5477 under Mortgage  
35678 to Northern Hotels Ltd for £3500

1960			10
Jan 31	By Northern Hotels Ltd to settle:-		
	Cash deposit	500. 0.0	
	mortgage to Shahbaz Khan securing balance purchase price	3000. 0.0	
	purchaser's share of rates for 5 months to 30.6.60 at £25.15.8 per annum	10.14.10	20
	To Suva City Council rates 6 months to 30.6.60	12.17.10	
	" repayment of moneys secured by collateral mortgages Nos. 35678, 35684 and 44796 as shown in attached statement of account	2314. 9. 8	30
	" costs of discharges of said mortgages as to Cs.T.5425 and 5349	6. 6. 0	

		Exhibits
		-----
1960		
Jan 31	To stamp duty and registration fees	4. 2. 6
	" settlement of judgment in Action 233/58 - costs as taxed	55.11. 6
	interest at 5% on judgment 25.8.59 to 31.1.60	1. 4. 2
1957		
Nov	" costs incurred at your request in preparation and execution of partial discharges of mortgages affecting C.T. 5425 in anticipation of uncompleted sale -	4. 4. 0
1958		
Feb	" solicitor's costs and expenses incurred in and towards realization of security:	
	costs paid for preparation of notices of demand and arranging service -	2. 2. 0
	Bailiff's service fee and expenses	4. 0. 0

No.19  
Accounts,  
Shahbaz Khan  
16th  
February  
1948 to  
31st  
January  
1960  
(continued)

Exhibits                      Messrs. Bhai Suchit, Lakhmi Jit, Ranjit & Dhanjit

<p>No. 19 Accounts, Shahbaz Khan 16th February 1948 to 31st January 1960 (continued)</p>	<p>June</p>	<p>In account with Shahbaz Khan, c/o Munro, Warren, Leys &amp; Kermode, Solicitors, SUVA, FIJI.</p> <p>Costs of instructions for mortgagee's sale of Cs.T. 5425,5349 and 5477, preparing Particulars and Conditions of Sale, arranging and checking advertis- ing and paying charges, attend- ances on and correspondence with enquirers, receiving offers totalling £5425.7.6. for all properties when sale is frust- rated by lodgment of caveats and commencement of your abortive action</p> <p>advertising - Fiji Times            10.10.0 Shanti Dutt <u>6.15.0</u></p> <p>costs of attendances searching caveats Nos. 67986 and 67987, instructions to</p>	<p>10</p> <p>20</p> <p>30</p>	<p>26. 5.0</p> <p>17. 5.0</p> <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> <p>C/F        £2448. 7.8    3510.14.10</p>
--	-------------	---	-------------------------------	--



		b/f	2448. 7. 8 3510.14.10	<u>Exhibits</u>
		have them removed, preparing and registering appli- cations for removal	5. 5. 0	No.19 Accounts Shahbaz Khan 16th February 1948 to 31st January 1960 (continued)
		search fee and forms	4. 0	
		registration fees	2.10. 0	
1959 Sept	10	After discontin- uance of your action costs of attendances on several solicitors re your proposals for repayment and lengthy explana- tions of position when no repayment is forthcoming -	5. 5. 0	
	20	costs of instructions for fresh mortgagee's sale, preparing fresh particulars and conditions of Sale, arranging and checking advertis- ing and paying charges, attendances on and correspondence with enquirers, receiving only offer of £5300 for all properties, numerous attendances pursuing offeror and investigating his ability to pay when offer found to be worthless -	26. 5. 0	
	30	advertising - Fiji Times	4.13.9	
		<u>4. 0.0</u>	8.13. 9	

Exhibits

No.19 Accounts Shahbaz Khan 16th February 1948 to 31st January 1960 (continued)		costs of attendances on and correspondence with Northern Hotels Ltd. negotiating and completing sale of C.T.5477 for £3500	50. 0.0
	10	costs of preparation of account of proceeds of sale and reporting to your Solicitors	2. 2.0
		To balance applied towards money secured by second Mortgages Nos.44797 and 44798 as shown in the attached statement of account under Agreement for Sale and Purchase dated 16.2.48	962. 2.5
			<hr/>
			£3510.14.10 £3510.14.10

20 E&OE. 31st January 1960

Messrs. Ujgir and Lakshmijit

In account with SHAHBAZ KHAN,  
c/o MUNRO, WARREN,  
LEYS, & KERMODE,  
SOLICITORS,  
SUVA, FIJI.

30 Statement of Account - Agreement for  
Sale and Purchase dated 16.2.48  
(secured by Mortgages Nos.44797  
and 44798)

1948  
Feb. To estimated purchase  
16 price subject to  
adjustment on survey 5760.0.0

		By part payment of deposit		50. 0. 0	Exhibits
	Dec.31	To interest to date	689.19. 2		No.19 Accounts Shahbaz Khan
	<u>1951</u>				16th
	Jan 9	By cane proceeds applied to: balance deposit instalment due		70. 0. 0	February 1948 to
		1.8.48		30. 0. 0	31st
10	Feb.1	To interest to date	23.18.10		January 1960
	Nov 13	By cane proceeds applied to interest		8.12. 7	(continued)
	"	" " "		25.12. 3	
	"	" " "		438.13. 1	
	30	" " "		204.10. 0	
	Dec 31	To interest to date	257. 2. 6		
		By balance		5903.12. 7	
				<u>£6731. 0.6</u>	<u>£6731.0.6</u>
	" "	To balance - purchase price (estimated)		5610.0.0	
20				interest to 31.12.51	
				293.12.7	
	<u>1952</u>				
	May 14	By cane proceeds applied to interest		130.14.10	
	Nov 5	By " " " "		10.16. 5	
	Sept 24	To interest to date	205. 8.10		
	Dec 31	To interest to date	74.14. 8		
	<u>1954</u>				
30	Dec 31	To interest to date	561. 0. 0		
	<u>1959</u>				
	Dec 31	To interest to date	1402.10. 0		
	<u>1960</u>				
	Jan 31	By credit being surplus from sale of C.T.5477 as per attached statement of a/c balance		962. 2. 5	
				7043.12. 5	
				<u>£8147. 6. 1</u>	<u>£8147. 6. 1</u>

Exhibits

Messrs. Bhai Suchit, Lakshmit, Dhanjit & Ranjit

No.19  
Accounts  
Shahbaz  
Khan  
16th  
February  
1948 to  
31st  
January  
1960  
(continued)

In account with SHAHBAZ KHAN  
c/o MUNRO, WARREN, LEYS  
& KERMODE  
SOLICITORS,  
SUVA, FIJI

To balance owing :-			
balance purchase price	5610. 0.0		
balance interest to			
January 31.12.56	1433.12.5		10
		<u>£7043.12.5</u>	

E. & O.E. 31st January 1960

Statement of Loan Account -  
Mortgages Nos.44797 and 44798

<u>1950</u>				
Apr 6	To principal sum	400. 0. 0		
<u>1951</u>				
Feb 28	" interest to date at 8%	28.15. 3		
Apr 20	" insurance premium paid	17.13. 6		20
Oct 4	" further advance	125. 0. 0		
Dec 31	" interest to date	30. 1. 1		
	By net rent		42.15. 0	
<u>1952</u>				
Jan 23	" " "		14. 5. 0	
Mch 8	To insurance premium paid	17.13. 6		
Jly 10	By you		10. 0. 0	
Aug 5	" "		10. 0. 0	30
" 22	To insurance premium paid	5. 1. 0		
Sep 10	By you		10. 0. 0	
Oct 11	" "		10. 0. 0	
Dec 31	To interest to date	44.13. 7		

Messrs. Bhai Suchit, Lakshmijit, Dhanjit & Ranjit Exhibits

		In account with	SHAHBAZ KHAN c/o MUNRO, WARREN, LEYS & KERMODE SOLICITORS, SUVA, FIJI.	No.19 Accounts Shahbaz Khan 16th February 1948 to 31st January 1960 (continued)
	<u>1953</u>			
10	Jan 5	To interest to date	12. 5	
	" "	By you		10. 0. 0
	Feb.12	To interest to date	4.13. 8	
		By you		10. 0. 0
		By rent		31.17. 0
	Apl 24	To insurance premium paid	17.13. 6	
	Aug 13	" "	5. 1. 0	
	Dec 31	To interest to date	37.19.11	
20	<u>1954</u>			
	Jan 25	Net rent		37.19.11
	Dec 31	To interest to date	43.16.11	
	<u>1955</u>			
	Jan 31	By net rent		42.15. 0
	Apl 23	To insurance premium paid	17.13. 6	
		To interest to date	13.11. 6	
30		By net rent		42.15. 0
	Dec 31	To interest to date	29. 9.11	
	<u>1956</u>			
	Dec 31	" " "	43. 2. 0	
	<u>1957</u>			
	May 23	By you		10. 0. 0
	Aug 2	" "		10. 0. 0
	Dec 31	To interest to date	43. 0. 2	
	<u>1958</u>			
	Dec 31	" " "	43. 0. 2	

Exhibits Messrs. Bhai Suchit, Lakshmijit, Dhanjit & Ranjit

No.19  
Accounts  
Shahbaz  
Khan  
16th  
February  
1948 to  
31st  
January  
1960  
(continued)

In account with SHAHBAZ KHAN  
c/o MUNRO, WARREN,  
LEYS & KERMODE  
SOLICITORS,  
SUVA, FIJI

	<u>1958</u>	To interest to		
	Dec 31	date	43. 0. 2	
	<u>1959</u>	" " "	43. 0. 2	
	Dec 31	By balance		719. 4. 2
			<u>£1011.10.11</u>	<u>£1011.11. 1</u>

10

To balance owing:  
    principal           537.13.5  
    interest to  
    31.12.59           181.10.7       £719.4.2.

E. & O.E.   31st January 1960

Messrs. Bhai Suchit, Lakhmi Jit, Ranjit & Dhanhit

Exhibits

In account with Shahbaz Khan  
c/o Munro, Warren, Leys &  
Kermode, Solicitors,  
SUVA, FIJI.

No.19  
Accounts,  
Shahbaz Khan  
16th  
February  
1948 to  
31st  
January  
1960  
(continued)

Statement of Account - Mortgages  
Nos. 35678, 35684 and 44796

1958					
	Jan 31	To	Principal Sum	1735.10.9	
			Interest to date	267.12.2	
10	Mar 8	"	fire insurance premium Policy No.S/40847	22.15.0	
	May 14	"	fire insurance premium Policy No.SF/42210	6.16.6	
1959					
	Jan 31	To	interest to date	140.11.1	
1960					
	Jan 31	"	" " " "	141. 4.2	
20		By	credit from proceeds of sale of C.T.5477	2314. 9. 8	
				<hr/>	
				£2314. 9.8	£2314. 9. 8
				<hr/> <hr/>	

E. & O.E. 16th February, 1960

Exhibits

EXHIBIT No. 18

No.18  
Accounts  
Shahbaz Khan  
Estate  
31st  
January  
1960 to  
19th  
November  
1968

ACCOUNTS, SHAHBAZ KHAN  
ESTATE

Messrs. Bhai Suchit, Lakshmijit, Ranjit,  
Dhanjit and Ujagir

In account with Shahbaz Khan Estate,  
c/o Sherani & Co.,  
Box 1004,  
SUVA, FIJI.

Statement of Account - Agreement for Sale and Purchase dated 23rd February, 1948 - secured by Mortgages 44797 and 44798 10

31/1/60 Balance 8276.2.11

Less paid

17/1/60 £ 5. 0. 0

1/3/60 20. 0. 0

20/4/60 20. 0. 0

17/9/60 20. 0. 0

£65. 0. 0

65.0. 0

£8211.2.11

20

31.12.1966

By balance B/F

£8211.2.11

Interest at 2½% on

£5610.0.0 from

1/1/67 to 30/3/67

35.1. 3

£8246.4. 2

SHERANI & CO

Per:

.....  
Solicitors for the Estate of  
Shahbaz Khan

30

E. & O.E.



Messrs. Bhai Suchit, Lakshmijit, Dhanjit,  
Ranjit & Ujagir

Exhibits

In Account with Shahbaz Khan  
Estate  
c/o Sherani & Co.  
Box 1004  
SUVA, FIJI

No.18  
Accounts  
Shahbaz Khan  
Estate  
31st  
January 1960  
to 19th  
November  
1968  
(continued)

10 Statement of Account - Agreement for Sale &  
Purchase dated 16th February, 1948 - secured  
by Mortgages 44797 and 44798

31.12.1966 By balance b/f £10331. 6.4

Interest at 5% on  
£5760 from 1/1/67 to  
30/3/67 74. 0.0

£10405. 6.4

SHERANI & CO.  
PER:

.....  
Solicitors for Shahbaz Khan  
Estate

20 E. & O.E.

Messrs. Bhai Suchit, Lakshmijit, Dhanjit, Ranjit  
and Ujagir

In account with Shahbaz Khan Estate  
c/o Sherani & Co.  
Box 1004  
Suva, Fiji.

Statement of Loan Account Mortgages Nos.  
44797 and 44798

30 31.12.66 B/F £1063. 7.2  
To interest from 1/1/67  
to 30/3/67 10.15.1

£1074. 2.3

Exhibits

SHERANI & CO.

PER:

No.18  
Accounts  
Shahbaz Khan  
Estate  
31st  
January  
1960 to  
19th  
November  
1968  
(continued)

.....  
Solicitors for Shahbaz Khan  
Estate

E. & O.E.

Messrs. Bhai Suchit, Lakshmijit, Dhanjit,  
Ranjit and Ujagir

In account with Shahbaz Khan Estate  
c/o Sherani & Co.  
Box 1004  
SUVA, FIJI.

10

STATEMENT OF LOAN A/C MORTGAGES  
NOS. 44797 and 44798

31.12.66	B/F	£1063. 7. 3
	To interest till 31/12/67	43. 0. 2
	To interest till 19/11/68	41. 4. 2
		<u>£1147.11. 6</u>

19/11/68

By sale of C.T.5349 and  
5424 £2500.0.0

20

To Cost and disbursements as per Statement of a/c attached	245. 5. 0
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Balance forfeited towards monies owing under Sale and Purchase Agreement	1107. 3. 6
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£2500.0.0	£2500. 0. 0
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SHERANI & CO

Per:.....

Solicitors for Shahbaz Khan Estate

30

E. & O.E.

Messrs. Bhai Suchit, Lakshmijit, Dhanjit,  
Ranjit and Ujagir

Exhibits

In account with Shahbaz Khan Estate  
c/o Sherani & Co.,  
P.O. Box 1004  
SUVA.

No.18  
Accounts  
Shahbaz Khan  
Estate  
31st  
January  
1960 to  
19th  
November  
1968  
(continued)

	19.11.68	By sale of C.T.5425 and 5349	£2500.0.0
10	17.9.60	Cost of instruction to make formal demands on you, preparing schedules of monies due by you on various accounts, preparing and serving formal demands with schedules of account for payment of monies herein on you	
20	17.10.60	Costs of instructions for mortgagee's sale of C.T. 5425, 5349 and preparing particulars and conditions of sale, arranging and checking advertising and paying charges, attendances on enquirers, receiving and considering offers.	
30	17.10.60	Costs of instructions to preparing and serving on you Notice that in default of payments application to Registrar General for foreclosure order shall be made	
40	9.1.64	Costs of instructions to make formal demands of payment, preparing demand Notices with schedules of various accounts, serving same on you	21. 0. 0





<u>Exhibits</u>	H.Lee, R.Jit,		
No.18	Ashraf, Bal Mukund		
Accounts	and taking them to		
Shahbaz Khan	side discussions re		
Estate	sale and conditions		
31st	for sale	21. 0. 0	
January	To attendances on		
1960 to	7th, 8th, 9th, 12th,		
19th	13th and 14th of		
November	August 1968 on Messrs.		10
1968	Reddy and Bidesi,		
(continued)	discussing sale and		
	conditions of sale		
	showing land, and		
	attendances and		
	pursuing offerors	26. 5. 0	
	Applied towards		
	monies due by you		
	to Estate of		
	Shahbaz Khan	2183. 5. 0	20
		<hr/>	
		£2428.10. 0	£2500.0.0
		<hr/>	

SHERANI & CO.  
as Solicitors for Estate of  
Shahbaz Khan.

Per: ?

19.11.68

Messrs. Bhai Suchit, Lakshmijit, Dhanjit,  
Ranjit and Ujagir

Exhibits

In account with Shahbaz Khan Estate  
c/o Sherani & Co.  
Box 1004  
SUVA, FIJI

No.18  
Accounts  
Shahbaz Khan  
Estate  
31st  
January  
1960 to  
19th  
November  
1968

(continued)

Statement of Loan Account  
Mortgages Nos.44797 and 44798

31.12.66 B/F £1063. 7.2

10 To interest from 1/1/67  
to 30/3/67 10.15.1

£1074. 2.3

SHERANI & CO.

Per:

Sgd. ?

Solicitors for Shahbaz Khan Estate

E. & O.E.

Messrs. Bhai Suchit, Lakshmijit, Dhanjit and  
Ranjit

20 In account with Shahbaz Khan Estate  
c/o Sherani & Co.  
Box 1004  
SUVA, FIJI

STATEMENT of Loan Account Mortgages  
Nos. 44797 and 44798

Balance brought forward 30/9/68 £1148. 1.2

Exhibits

Exhibit No. 20

No.20

RECEIPTS, SHAHBAZ KHAN TO LAKCHMIJIT

Receipts,  
Shahbaz Khan  
to Lakchmijit  
17th January  
1961

S.MOHAMMED  
BARRISTER & SOLICITOR,  
ARCADE CHAMBERS,  
SUTARIA BUILDING,  
CUMMING STREET,  
SUVA.

OFFICE RECEIPT  
FORM TRUST A/C  
AX.No.268

17.1.1961

RECEIVED from Lakchmi Jit  
by cheque/cash the sum of Twenty Pounds  
for credit of Shahbaz Khan  
being amount owing and reduction hereof.

10

S. Mohammed  
per: Sgd.S.Mohammed.

£20.0.0.      2d stamp cancelled.

---

3rd March  
1961

AX.No.294

3.3.1961

RECEIVED FROM: Latchmi Jeet  
by cheque/cash the sum of Twenty Pounds  
for credit of Shahbaz Khan  
being Instalment re-Purchase money.

20

S. Mohammed  
per: Sgd. S.Mohammed.

£20.0.0.      2d stamp cancelled.

---

20th March  
1961

BX .No.609

20.3.1961

RECEIVED from Latchmi Jeet  
by cheque/cash the sum of Five Pounds being fees.

S. Mohammed  
Per: S. Mohammed.      30

£5.0.0.      2nd stamp cancelled.



S.MOHAMMED  
BARRISTER & SOLICITOR  
ARCADE BUILDING,  
CUMMING STREET, SUVA.

AX.No.314  
24.4.1961.

Exhibits

No. 20

Receipts,  
Shahbaz Khan  
to Lakshmijit  
24th April  
1961

RECEIVED from Ram Nilme Lakshmijit  
by cheque/cash the sum of Twenty Pounds  
for credit of Shahbaz Khan  
being in a/c Debt.

S. Mohammed

10

Sgd. ?

£20.0.0.      2d stamp cancelled.

IN THE PRIVY COUNCIL

No. 1 of 1972

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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

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B E T W E E N

LAKSHMIJIT s/o Bhai Suchit

(Defendant) Appellant

- and -

FAIZ MOHAMMED KHAN SHERANI  
as Administrator of the  
Estate of Shahbaz Khan deceased

(Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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WILSON FREEMAN  
6/8 Westminster Palace Gardens,  
Artillery Row,  
London, SW1P 1RL  
Solicitors for the Appellant

CHARLES RUSSELL & CO.  
Hale Court,  
Lincoln's Inn,  
London, WC2A 3AS  
Solicitors for the Respondent