

15

IN THE PRIVY COUNCIL

No. 15 of 1975

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

B E T W E E N

AMRATLAL JAMNADAS (s/o JAMNADAS)

Appellant

- end -

GULAB BEN (d/o RATANJI)

Respondent

RECORD OF PROCEEDINGS

A.L. PHILLIPS & CO.
Terminus Chambers,
6 Holborn Viaduct,
London, EC1A 2AH.
Solicitors for Appellant

WILSON FREEMAN
6/8 Westminster Palace
Gardens,
Artillery Row,
London, SW1P 1RL.
Solicitors for Respondent

IN THE PRIVY COUNCILNo.15 of 1975ON APPEAL
FROM THE FIJI COURT OF APPEAL

Between

AMRATLAL JAMNADAS (s/o JAMNADAS)

Appellant

and

GULAB BEN (d/o RATANJI)

RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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Notice of Payment into Court of ₹24,000.00	27th September 1974
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Judgment	25th March 1975
Order	Undated

1.

IN THE PRIVY COUNCIL

No.15 of 1975

ON APPEAL
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

AMRATLAL JAMNADAS (S/o JAMNADAS)

Appellant

- and -

GULAB BEN (d/o RATANJI)

Respondent

RECORD OF PROCEEDINGS

No. 1

Writ of Summons

In the
Supreme Court

No. 1

IN THE SUPREME COURT OF FIJI

No. 297 of 1969

Writ of
Summons

18th December
1969

BETWEEN: GULAB BEN d/o Retanji PLAINTIFF

A N D : AMRATLAL JAMNADAS s/o DEFENDANT
Jamnadas

10 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 AMRATLAL JAMNADAS s/o Jamnadas of Suva,
Merchant

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WE COMMAND you, That within eight days after 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 GULAB
BEN d/o Retanji of Suva, Landlady and take notice
that in default of your so doing the plaintiff
may proceed therein, and judgment may be given in
your absence.

In the
Supreme Court

No. 1

Writ of
Summons

18th December
1969

(continued)

WITNESS the Honourable SIR CLIFFORD JAMES HAMMETT

Chief Justice of our Supreme Court, at Suva,
this 18th day of December 1969.

R A M R A K H A S

Per: (Sgd.) B.C. Ramrakha
Solicitor for the Plaintiff.

L.S.

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.

10

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 specific performance of an agreement in writing dated the 26th day of September, 1969 whereby the defendant would sell and the plaintiff would buy land, buildings and chattels, being certificate of title No. 9077 situate at Spring Street, Suva in the Colony of Fiji for the price of \$18,000.00 (Eighteen Thousand Dollars), and the plaintiff also claims damages for non-performance of the said agreement;

20

In the alternative the plaintiff claims damages for breach of contract;

And the plaintiff claims the costs of this action.

No. 2

Statement of Claim

In the
Supreme Court

No. 2

Statement
of Claim12th January
1970IN THE SUPREME COURT OF FIJI

No. 297 of 1969

BETWEEN: GULAB BEN d/o Ratanji PLAINTIFFA N D : AMRATLAL JAMNADAS s/o DEFENDANT
JamnadasSTATEMENT OF CLAIM

The plaintiff by her Solicitors says:-

- 10 1. By an agreement in writing dated the 26th day
of September, 1969 (which said agreement is
annexed to the schedule hereto) made by and
between the plaintiff and the defendant the
plaintiff agreed to purchase and the defendant
agreed to sell to the plaintiff the whole of
the land, buildings and chattels situated at
Spring Street, Suva and comprised in Certifi-
cate of Title No. 9077 and being Lot 1 on
20 deposited plan No. 2177 being Allotment 1
Section D Toorak (part of) in the City of Suva
in the Island of Viti Levu having an area more
or less of 22.9 perches for the price of
Eighteen Thousand Dollars (\$18,000.00).
2. The agreement so entered into has been part
performed as follows:-
- 30 On the 8th day of October, 1969 the
defendant accepted from Messrs. Parshotam & Co.
of Suva, the then solicitors for the plaintiff
and the defendant the sum of \$2,000 (Two
Thousand Dollars) in part payment of the
purchase price.
3. The plaintiff by her agents has orally and by
a letter dated the 23rd October, 1969
requested the defendant to perform his part of
the said agreement dated the 26th September,
1969 but the defendant has orally and by a
letter dated the 3rd November, 1969 refused to
comply with the plaintiffs said requests.

In the
Supreme Court

No. 2

Statement
of Claim

12th January
1970

(continued)

4. The plaintiff has at all times been ready and willing to perform her part of the said agreement.

WHEREFORE the Plaintiff claims as follows:-

- (1) A decree of specific performance of the said agreement dated the 26th September, 1969 and that the defendant be ordered to execute a proper conveyance of the said certificate of title No. 9077 to the plaintiff. 10
- (2) Special damages at the rate of \$60 per month from the 15th day of October, 1969 till the 31st December, 1969 and thereafter at the rate of \$140.00 per month from the 1st day of January 1970 till the date of the said conveyance.
- (3) General damages for non-performance of the said agreement.
- (4) In the alternative the plaintiff claims damages for breach of contract. 20
- (5) Costs.
6. In the alternative the plaintiff says that if the said agreement dated the 26th September, 1969 is not binding which is denied then the plaintiff claims from the defendant the sum of \$2,000 (TWO THOUSAND DOLLARS) being money had and received by the defendant to the use of the plaintiff.

Exhibit B

S C H E D U L E

MEMORANDUM OF TERMS AND CONDITIONS
OF SALE

30

VENDORS: AMRATLAL JAMNADAS (son of
Jamnadas) of Suva, Businessman

PURCHASER: GULAB BEN (f/n Ratanji) of Suva
Landlady

SUBJECT-MATTER OF SALE: (land, building,
chattels etc.) Certificate of Title 9077
situated at Spring St., Suva, together with
all improvements thereon.

The said property is sold SUBJECT TO the following Mortgage that is No.63066

In the Supreme Court

PURCHASE PRICE: \$18,000 (EIGHTEEN THOUSAND DOLLARS)

No. 2

DEPOSIT AND PART PAYMENT OF PURCHASE PRICE: The sum of \$500.00 now paid to Vendor or Parshotam & Co. Solicitors for the Vendors and the balance shall be paid upon execution of transfer subject only to above mortgage.

Statement of Claim
12th January 1970

(continued)
Exhibit B

TERMS AND CONDITIONS:

10 OUTGOINGS: Policy to be assigned to purchaser and premium to be apportioned as from 1st January, 1970.

TOWN RATES: Paid for period ending 31st day of December, 1969. Purchaser to pay from the 1st January, 1970.

OTHER OUTGOINGS: Such as water rates, electricity, telephone etc. Vendor will pay up to 31st December, 1969.

2. POSSESSION

20 (a) Possession to be given by the Vendor and taken by the Purchaser as from the date of execution of Transfer.

(b) Vacant possession to be given by the Vendor and taken by the purchaser as from 31st day of December, 1969.

(c) Details for tenants in occupation.

<u>NAME:</u>	<u>NATURE OF TENANCY</u>	<u>RENT</u>	<u>DATE PAID TO</u>
Wong Chee Wai	Lease	£30 per month	
Wong Chee Wai	Monthly tenancy		

30 (d) Purchaser to receive rents from the 15th day of October, 1969.

(e) Both parties to notify tenants of sale.

3. THE VENDOR declares as follows:

(a) That he has power to sell

(b) That no survey of the land hereby sold is

In the
Supreme Court

No. 2

Statement
of Claim

12th January
1970

(continued)

Exhibit B

necessary as the land has been properly surveyed and no consent of the sub-division of land Board or the Local Authority is necessary.

(c) The Land hereby sold is not affected by a Town Planning Scheme.

(d) There is no order of the Local Authority for closing or repair of buildings.

4. (a) The Purchasers acknowledges that he or his agent have personally inspected the subject-matter of sale and that he relies entirely on his judgment and that no error or misdescription of the area of the land hereby sold shall annul this agreement or entitle him to any damage or compensation.

10

(b) The Purchaser declares that he is under no disability to hold land.

5. CONSENT

(a) The consent of the following persons are to be obtained.

20

(b) Mortgagee that is first mortgage.

6. SPECIAL COVENANTS AND CONDITIONS

Vendor will occupy one flat now occupied by him free of from rent unto 31st December, 1969.

7. COSTS AND DISBURSEMENTS to be paid by Purchaser.

8. If default is made by the Purchaser in payment which due of any of the purchase moneys or interest or in performance or observance of any of the terms and conditions of the sale the Vendor (in addition to other remedies) may rescind this sale contract (whereupon the deposit therefore paid shall be forfeited to the Vendor as liquidated damages) and may at Vendor's option and without tendering any assurance resell the said land by public auction or private contract subject to such condition as the Vendor may think fit; and any deficiency /sic/in price resulting from

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and all expenses attending a resell or attempted resale after set-off or [sic] or any payments made in reduction of the purchase price may be recovered from the purchaser by the Vendor as liquidate damages; and any increase in price upon resale after deduction of expenses shall belong to the Vendor.

In the
Supreme Court

No. 2

Statement
of Claim

12th January
1970

(continued)

Exhibit B

10 9. The Vendor and the Purchaser mutually agree subject to all necessary consents (if any) to enter into the within transaction and to complete all documents necessary for carrying the same into effect such documents to contain the within-written terms and conditions and such other provisions as are usually inserted in documents of a similar nature pursuant to proper and usual conveyancing practice of Solicitors in Fiji.

DATED this 26th day of September, 1969.

20 SIGNED by the said Vendor)
after the contents hereof)
were read over and explained)
to him in the English language) Sgd:
when he appeared fully to) Amratlal
understand the meaning and) Jamnadas.
effect thereof before signing)
in the presence of:)

Sgd. K. Parshotam

Solicitor, Suva.

30 SIGNED by the said Purchaser)
after the contents hereof were)
read over and explained to him) Sgd:
in the English Language when) C.V. Dass
he appeared fully to understand) for and on
the meaning and effect thereof) behalf of
before signing in the presence) Purchaser
of:) Gulab Ben.

Sgd. K. Parshotam

Solicitor, Suva.

DATED this 12th day of January, 1970.

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R A M R A K H A S

(Sgd.) B.C. Ramrakha

In the
Supreme Court

No. 2

Statement
of Claim

12th January
1970

(continued)

This Statement of Claim is delivered at the request of RAMRAKHAS the Solicitors for the plaintiff 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 Colony of Fiji.

No. 3

Amended
Defence

12th September
1973

No. 3

Amended Defence

Amended pursuant to the Order of the Honourable Mr. Justice Timoci Tuivaga made in Chambers dated the 11th day of September, 1973

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IN THE SUPREME COURT OF FIJI

No. 297 of 1969

BETWEEN: GULAB BEN (d/o Ratanji) PLAINTIFF

and

AMRATLAL JAMNADAS (S/o Jamnadas)

DEFENDANT

1. THE defendant admits signing a partially type-written and partially hand-written document on the date stated in paragraph 1 of the Statement of Claim but says that the copy document on the Schedule to the Statement of Claim does not correctly set forth the matters intended to be agreed upon, wherefore there was no consensus between the plaintiff and the defendant. In particular the defendant states that there was no agreement relating to the sale of chattels; that the intended consideration is not correctly stated in the said document; that specific arrangements were to be made regarding settlement of the mortgage on the property and that the sale was to be subject to the making of a formal contract upon which the defendant was to be independently advised. No such contract has been submitted to the defendant for consideration nor has the Defendant had a copy of the document hereinbefore referred to. Save as aforesaid the defendant does not admit paragraph 1 of the Statement of Claim.

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2. THE defendant admits having received payment of the sum of \$2,000.00 (Two Thousand Dollars) but does not admit that such payment constitutes part performance of any agreement, and the defendant repeats paragraph 1 of this Defence. Save as aforesaid the defendant does not admit paragraph 2 of the Statement of Claim.

In the
Supreme Court

No. 3

Amended
Defence

12th September
1973

(continued)

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3. THAT defendant does not admit paragraphs 3 and 4 of the Statement of Claim and repeats paragraph 1 of this Defence.

4. FURTHER and in the alternative the defendant will plead in law that there is no sufficient note or memorandum in writing of the alleged contract (which is not admitted) as required by Section 59 of the Indemnity, Guarantee and Bailment Ordinance (Cap.208) and Section 4 of the Statute of Frauds.

DELIVERED the 12th day of September, 1973

GRAHAME & CO.

(Sgd.) C.L. Jamnadas

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Solicitors for the Defendant

This Amended Defence is filed and delivered by Messrs. Grahame & Co., Solicitors for the Defendant whose address for service is Mansfield Chambers, 165 Victoria Parade, Suva.

To the Plaintiff and/or her Solicitors Messrs. Remrekhas of Marks Street, Suva.

No. 4

Amended Reply

No. 4

Amended Reply
19th September
1973

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IN THE SUPREME COURT OF FIJI

No. 297 of 1969

BETWEEN: GULAB BEN (d/o Ratanji)

PLAINTIFF

- and -

AMRATLAL JAMNADAS
s/o Jamnadas)

DEFENDANT

In the
Supreme Court

No. 4

Amended Reply
19th September
1973

(continued)

1. THE Plaintiff joins issue with the defendant on his defence, except insofar as the same consists of admissions.

2. THE plaintiff admits that the sale was complete, but subject to the mortgage, and the plaintiff through one Abdul Lateef, acting for the defendant, and her solicitor, Kantilal Parshotam obtained the approval of the mortgagee to the sale;

3. THE plaintiff further says that after the approval of the mortgagee as aforesaid, the defendant requested the plaintiff by her solicitors, Messrs. Parshotam & Co., to pay to him a sum of TWO THOUSAND DOLLARS (\$2,000.00) which the plaintiff did pay. 10

4. THE plaintiff says that the defendant is now estopped from denying that the sale was completed, and says that the acceptance of the said monies was an act of part-performance on the part of the defendant, and an assertion that the sale was concluded. 20

5. THE plaintiff says that the defendant retains the said monies, and has not offered to return the same to her, or paid the same into court.

6. THE plaintiff further says that the copy document on the Schedule to the Statement of Claim constitutes a proper note or memorandum of the sale, and purchase of the property, and was intended to operate as such by the Plaintiff and the defendant.

7. IN any event the plaintiff will rely on the following acts of part performance 30

(a) payment of the sum of \$2,000.00 on account of the purchase price

(b) the obtaining of the consent of the first mortgage as aforesaid from the said Abdul Lateef and confirmation thereof by Messrs. Parshotam & Co. acting for the both parties by letter dated the 10th October, 1969.

(c) the retention by the defendant of the said sum of \$2,000.00 and user thereof by him for his own purposes. 40

8. THE plaintiff will further plead that the

agreement between the parties as contained in the Schedule to the Statement of Claim is complete in itself, and cannot be varied altered or deviated from by the parties.

In the
Supreme Court

No. 4

Amended Reply
19th September
1973

(continued)

DELIVERED this 19th day of September, 1973

R A M R A K H A S

Per: (Sgd.) K.C. Ramrakha

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This Amended Reply is delivered at the request of RAMRAKHAS the Solicitors for the Plaintiff whose address for service is at the office of the said solicitors in K.W. March Limited's Building, 77 Marks Street, Suva.

No. 5

Proceedings

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

Civil Jurisdiction

Action No. 297 of 1969

Before the Hon. Mr. Justice Stuart, Judge

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Thursday the 27th day of September, 1973
at 9.30 a.m.

BETWEEN: GULAB BEN d/o Retanji Plaintiff

A N D : AMRATLAL JAMNADAS s/o Defendant
Jamnadas

Mr. K.C. Ramrakha & H.M. Patel for the Plaintiff
Mr. C.L. Jamnadas for the Defendant

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RAMRAKHA: Basic question is whether agreement is indeed an agreement. Agreed correspondence produced. If court finds there was no agreement then defendant must succeed. I am asking for an amendment of the prayer in the Statement of Claim.

JAMNADAS: I object on ground that this action has

No. 5

Proceedings

27th September
1973

In the
Supreme Court

No. 5

Proceedings

27th September
1973

(continued)

been going since January 1970 and only 2 weeks ago the defence was amended by leave in spite of opposition by the plaintiff. No actual inconvenience results.

COURT: Leave to amend granted in terms of typed clause (2) of prayer.

RAMRAKHA: We claim we purchased subject to a first mortgage - \$18000 subject to \$8000. Document now stamped as at \$26000. On 26/9/69 parties went to Parshotam and he completed form. He acted for both parties. Later Lateef acted for Purchaser. Draft transfer sent to Lateef. On 8/10/69 defendant called on Parshotam and got \$2000 as part of purchase price - that now paid into Court. Purchaser and Lateef made agreement as to mortgage. On 12/10/69 plaintiff and defendant disagreed and defendant disputed sale and defendant wrote letter of 3/11/69.

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Plaintiff's
Evidence

No. 6

Jean Smith
Examination

No. 6

Jean Smith

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P.W.1 Jean Smith of 16 Des Voeux Road, Suva,
Accountant

I work for Cromptons. I produce account of mortgage No. 63056 in name of defendant.

JAMNADAS: I object - on grounds

- (a) that defendant has not seen the document,
- (b) that Cromptons were acting as solicitors for defendant. They appeared to wait and defended. Refer to letter 8,
- (c) that witness has not said she knows anything about the document she is producing,
- (d) that plaintiff's allegation is that Lateef is to give evidence consenting to mortgage.

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COURT: I am afraid that I am unable at the

moment to see any good grounds for objecting to the reception of this evidence, and therefore it will be received.

WITNESS: I have records - I have been authorised to give evidence - tender record. Amount due on this at end of 1969 was £8000.

CROSS-EXAMINATION: I have been accountant for 16 months. Interest payable at end of 1969 was 6½%. £390 was owing at end of 1969. Daily rate not been calculated to my knowledge. So far as I can see, no accounts given to anyone as to amount owing at end of 1969. Interest is made out at the end of each month amount due on one side and amounts paid on the other - interest is calculated with monthly rates on a reducing basis.

No. 7

Chimanlal

P.W.2 Chimanlal f/n Vallabhdas of 113 Amy Street, Suva. Company Director. Sworn on Ramayan.

I see defendant. He is related to me - he is my cousin. I have known him many years. I know building in Spring Street with 2 shops and flat on top. In September, 1969 I was asked to purchase this building. A man called Moti came to see me. He is an estate agent. After 2 days on 16/9/69 I went to see defendant at his sports' shop at Epworth House with Moti - about 9 a.m. Then defendant made an appointment to see K.Parshotam, solicitor. We went to see him about 10 a.m. We had conversation. He took out a form and said this is the usual form we use for buying properties. He asked questions and filled in the form. He asked questions of both of us. When it was completed defendant signed it. I signed it on behalf of my wife. I produce document.

JAMNADAS: I object as to stamping (he is shown document) - but objection is now withdrawn.

RAMRAKHA: Refer to Phipson para 589 as to conversation with Parshotam.

WITNESS: Resworn after adjournment.

In the
Supreme Court

Plaintiff's
Evidence
No. 6

Jean Smith
Examination
(continued)

27th September
1973

Cross-
examination

No. 7

Chimanlal
Examination

In the
Supreme Court

Plaintiff's
Evidence

No. 7

Chimanlal
Examination
(continued)

27th September
1973

To Ramrakha: He then read it over and we signed. He was speaking in English. I do not remember if he signed but he said it was binding on both of us. At that same time I paid a deposit to Parshotam & Co. He was acting for both of us. The appointment was made by defendant; but I regarded him as acting for me. I tender receipt I received from him. Later, after 3-4 days I paid a further \$11,500 to Parshotam. Then I called on Lateef with defendant and Parshotam. A discussion took place about first mortgage to Coubrough Estate. We were all there. Parshotam asked Lateef who said first mortgage had \$8000 owing. Lateef acting for 1st mortgagee. An agreement was made that \$2000 would be paid by me and I would give a fresh mortgage for \$6000, to Coubrough Estate. I accepted this arrangement and we all went away. Later on we disagreed; and he refused to go on. I produce Certificate of Title 9077 certified under cap. 78 and also Caveat 110258. Also mortgage 122182. Apart from signing Caveat my wife had no conversation with defendant. I acted as her agent throughout, and I hold a P/A. My wife has gone to India to see her mother who is ill. I produce Power of Attorney registered as 5675 and my wife signed in my presence and that of Mr. Ramrakha. At time of purchase defendant was occupying flat on top. He is still there. He is also occupying one shop and the other is occupied by Nippon Trading Co. I ask for an order that he transfer land to me at the agreed price. I also ask for order for vacant possession from him and also account from 15/10/69.

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Cross-
examination

CROSS-EXAMINATION: - JAMNADAS

Document is dated 26/9/69. Plaintiff was my de-facto wife. I married her subsequently. I had no Power of Attorney at that time. I had no written authority to enter into a contract on her behalf. No authority produced to Parshotam. On 26/9/69 Parshotam's office in Tolo Buildings. He has acted for me since 1966, but not exclusively. He had acted in numerous matters for both me and plaintiff. He took instructions from both of us - in writing. The document he wrote on is Ex. B. As far as I know no chattels were included in the sale. I bought the land and the improvements. Parshotam and Co. prepared this document. I do not know when they ceased to act for defendant. I consulted Ramrakhas shortly before 23/10/69. Later I instructed them to issue a writ. I did not instruct them to claim chattels. I say that we did

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reach an agreement with Lateef about the first mortgage a few days after this agreement was made. I was to pay \$2000 off mortgage and a new mortgage given by me to Coubrough estate. Mr. Lateef did not say he would consider matter and talk with Mr. Falvey. He said it would be okay, but he would have to refer to Falvey. I say that my proposal for a fresh mortgage was accepted. I do not remember what interest rate was to be paid on new mortgage but I think it was the same as the old one. I do not know how much I was to pay per month to the mortgagee. The mortgage was to be until the Coubrough estate wound up - about 2-3 years. I do not know if it was to be a demand mortgage. I do not know whether details were arrived at or not. Parshotam and Lateef knew that. I agree that term and rate of interest important but not very important as I would have paid in one years time. I am ready and willing to pay balance due on this sale. I have deposited \$12,000 with Parshotam and I was to provide a further \$6000. I did not understand sale to be for \$18,000 but for \$18000 and amount of mortgage.
(Two accounts put in by consent).

I paid \$11500 to Parshotam on 7/10/69 and I had already paid \$500 on 26/9/69. I was to provide a further \$6000 from my own funds. If purchase completed Parshotam would have settled on my behalf. The further \$6000 was not demanded from me. I told the lawyers I had the money whenever it was required. I got this \$11500 from the Bank and also the \$500 that I paid on 26/9/69. I did not think the whole price was \$18000. The price was not going to be increased by \$2000 if I paid that amount off the mortgage. I do not know if money ever tendered by my solicitors.

JAMNADAS: I put in by consent draft transfer enclosed with letter of 10/10/69 from Parshotam to Cromptons. XXn (continued) I did tell BNZ that I was buying this property from defendant. I did not tell Bank I was buying property for \$18000. I told them I wanted \$12000 for buying the Spring Street property. I told them I was buying for \$18000 with a mortgage of \$8000. I saw Mr. Sare, the manager. I think he has now gone away. I did not make any application in writing. Bank did not write to me. I made it. I do not know if they wrote to Parshotam & Co. Neither I nor Parshotam ever went to defendant with a cheque. I did not

In the
Supreme Court

Plaintiff's
Evidence
No. 7

Chimanlal
Cross-
examination
(continued)

27th September
1973

In the
Supreme Court

Plaintiff's
Evidence

No. 7

Chimanlal
Cross-
examination
(continued)

27th September
1973

think I was buying that property for
₹18000. I was paying ₹18000 and the amount of
the ₹8000. I did not know there was a second
mortgage on this property. I did not find out
about that until later. I was present when
plaintiff signed caveat which was subsequently
registered as 110258 (Ex.F). I did not see that
document. Caveat is subject to two mortgages.
I think there was a date for giving of vacant
possession, but no date given for settlement. 10
I was told that insurance had been paid by mort-
gagees and hence no question of insurance arose.
I did not notify tenants of this property that I
have bought it. Parshotam told us that was a
final and binding document. He did not say any-
thing about the contingency of the first mortgagee
not consenting to the sale. We were with
Parshotam 20-30 minutes. Yesterday Parshotam gave
me a bank cheque, for ₹500, to hand over to
Ramrakha. It was never paid to defendant. I did 20
not read Ex.B. It was explained to us. Part of
Clause 10 was crossed out because Parshotam said
2 lawyers were handling the matter. Parshotam did
not at that time ask for stamp duty. He did later
and I paid him, but I do not know how much it was.
I have bought a number of properties. On 25/9/69
I mortgaged my Weimanu Road property to BNZ for
₹12500. I think I paid Parshotam something for
stamp duty. Meeting with Lateef was about 28 or
29 September. Parshotam never asked me for balance 30
of money required to pay defendant. He did tell
me there was a dispute. I do not know when that
was.

Re-examination

RE-EXAMINATION: I did get a cheque from Parshotam
for ₹500. I now produce 3 cheques for ₹500, ₹8000
and ₹15,500 all Bank cheques.

JAMNADAS: I object.

RAMRAKHA: I withdraw those cheques.

WITNESS: At a certain stage, I realised that
defendant did not want to go on. I did not think
there was any point in going to him with the rest
of the money. I was not expected to give the Bank
a mortgage on the Spring Street properties.
Defendant did not expect to give the Bank a mort-
gage on the Spring Street properties. Defendant
did not ever ask for balance of moneys nor offer
to complete. 40

TO COURT: There was never any discussion between us as to balance.

In the
Supreme Court

WITNESS: If, Lateef had wanted the mortgage paid off, I could have paid it off by getting a loan from my cousin.

Plaintiff's
Evidence

No. 7

12.45 adjourned until 2.15 p.m.

Re-examination
(continued)

On Resumption

27th September
1973

Agreed correspondence produced as Ex. K.

No. 8

No. 8

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Kantilal Parshotam

Kantilal
Parshotam
Examination

Kantilal Parshotam, 412 Waimanu Road, Suva,
Solicitor.

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I have been practising in Suva since May, 1959. I know both parties. In 1969 I had an office in Tolo Buildings. I saw parties in 1969. I think plaintiff rang me, and he told me he wanted to come and see me with defendant. I have acted for both parties from time to time. I gave them an appointment and plaintiff told me what it was about and he gave me the title number of the property and I instructed my clerk to make a search. Later both parties came. I have standard form which I use for property dealings. Ex. B is the standard form and I filled it in from information given to me by both parties. I completed form in my handwriting and then they both signed. My normal practice is to explain form to parties - I usually take pains^d to explain carefully when I act for both parties. I think that I spoke in English, as I normally do when both parties speak English. I am quite sure that both parties understood the agreement. I explained to them that this was a final document. Plaintiff paid deposit of \$500. Vendor told me that Cromptons acted for 1st mortgagee and that Lateef was dealing with mortgage. I see mortgage 63056. (mark across Clause 1 made by photocopying machine). I contacted Lateef on instructions of Vendor. I was acting for both parties. 2-3 days later plaintiff and defendant and I met Mr. Lateef at his office. At first Lateef annoyed with defendant because he was not reducing. He said \$8000 was due and he wanted \$2000 paid immediately.

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In the
Supreme Court

Plaintiff's
Evidence

No. 8

Kantilal
Parshotam
Examination
(continued)

27th September
1973

He said there would be no problem but he wanted to confirm matter with Falvey. Lateef suggested that fresh mortgage be taken from purchaser. Plaintiff agreed to that. Mr. Lateef obviously knew defendant and rebuked him for not coming to him and it was then arranged that I would act for Plaintiff and Lateef would act for defendant. Defendant kept on ringing me and I put him on to Cromptons. Lateef rang me within a few days and I wrote him confirming the arrangement. I see K1 - that is my letter. That is transfer. I did not make that subject to a mortgage, because Lateef was to have a fresh mortgage for \$6000. I paid out money to defendant. I told defendant I had money from plaintiff. Defendant told me Lateef was sick and was not moving fast and he told me he would lose property if I did not pay him \$2000 by cheque. I did not take a receipt from him. Later a dispute arose defendant said he was not going to sell that property under any circumstances. I then told plaintiff to see Ramrakhas. I retained the \$500 until yesterday until I paid it out to you. On 3/12/69 plaintiff uplifted \$9500. Referring to Ex. B the typed part is part of the form and is altered as occasion arises.

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Cross-
examination

CROSS-EXAMINATION: JAMNADAS

Defendant and P.W.1 came to see me on 26/9/69. Appointment was made by P.W.2. I would agree that I have acted for plaintiff or C.V. Dass on several occasions. I think I started acting for C.V. Dass in 1963 or 1964, but I have not done very much for defendant. There were only a few matters. When they came in I heard what they said and then I completed the form. This is not instructions for a sale, it is a sale and purchase agreement. No chattels in this particular case. If there had been I would have had a list made and annexed to the agreement. I have crossed out where any provisions were inapplicable. The word 'chattels' in the heading is simply a reminder.

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I ceased to act for defendant when we met Lateef. I have no note of the interview with Lateef. I cannot give a definite date when I met Mr. Lateef. It would be either 2-3 days after 26/9/69. I have no notes of any interview, but continued to act for plaintiff and C.V. Dass. Defendant continued to ring me. I made no note as to when I ceased to act for plaintiff. I handed

In the
Supreme Court

Plaintiff's
Evidence

No. 8

Kantilal
Parshotam
Cross-
examination
(continued)

27th September
1973

all relevant papers to Ramrakhas. I did not hand over my whole file, but only the papers they asked for. I gave them the Sale and Purchase agreement. I do not know what was in Writ of Summons. It is not correct that any chattels were sold. The land was sold at \$18000 plus amount on first mortgage. Defendant told me about \$8000 owing on first mortgage. I accepted that figure. I say that \$8000
 10 ^{*/sic/} exactly was owing on 26/9/73.* The agreement was made on the basis that \$8000 was owing to the mortgagee. I agree that there is no mention of the amount of the mortgage in the agreement. The purchaser was willing to take the land on the basis on whatever was owing under the first mortgage. Both believed \$8000 owing. The document says nothing about arrears of interest. These were not merely instructions for a sale. As to the word etc. in the form, this is merely part of the form. I agree that chattels was not deleted by me. Some-
 20 times alterations are initialled sometimes by me. I insist that these were not merely instructions. If that were so, another agreement would have been entered into between the parties. I considered that document a binding agreement. It would normally be stamped within 2 months. It was not because it was supposed to be only preliminary instructions that it was not stamped. Time was not of the essence, and that was deleted because with Cromptons in the matter I did not know how long it would take. I did not delete this because a lot of
 30 details had still to be agreed and a definite agreement settled between the parties. In this document I state purchase price as \$18000. At this time I was solicitor for both parties, not only the vendor. I do not think that any date was set for execution of transfer because parties were uncertain because whole matter rested with Mr. Lateef. They were uncertain as to when Mr. Lateef would be ready with his mortgage. They were, however, certain about
 40 everything else. I understood from parties that they wanted matter finalised. This is a concluded sale. A date for completion is important. I cannot see any particular date set in document for completion. I did not think it possible to put a date in. The transaction might have been delayed for months or even a year. I have deleted specific time in Clause 10 as unapplicable. I did not delete part of Clause 10 because this document was merely a preliminary agreement. I do not know what would
 50 have happened about interest under 1st mortgage if completion had been delayed for one year. There

In the
Supreme Court

Plaintiff's
Evidence

No. 8

Kentilal
Parshotam
Cross-
examination
(continued)

27th September
1973

was a great deal of good faith between the parties who were related. There was no argument. Nevertheless this is a concluded agreement. This is a legally binding document. I do not know who would have paid mortgage instalments if settlement had been delayed. On page 2 there are two lines in middle left in respecting insurance. All the rest about insurance has been deleted as inapplicable. What is left in may be contradictory with what is left out. I did not know particulars of insurance, so I crossed out that part but I left in part that provided for policy to be assigned to purchaser. There is no provision as to what might happen if property is destroyed. I did not advise them on this point. These were not deleted because the document was only instructions. There was no intention to draft a further agreement to embody more detail. I did not write to Insurance Company concerned. I did not consider it necessary at that time. Parties wanted this matter expedited. I did not consider it necessary to notify the insurance. I did not leave date of possession vague without a definite date because these were only instructions. I did give a date for vacant possession because that was agreed by the parties. My reason for putting 15th October was because the parties agreed upon that date. Even if settlement took a year purchase still would have received rents from 15/10/69. I did not notify tenant of sale. Mr. Lateef did ring me and he confirmed that he was agreeable to the sale and had obtained Mr. Falvey's consent. The sale was specifically subject to the mortgage. In normal way I would agree that purchaser would pay the outgoings on mortgage 63056. I do agree that Mr. Lateef did not agree to a sale subject to mortgage 63056 but he did agree to an arrangement for sale where \$2000 was paid off mortgage and a fresh mortgage taken for \$6000. I say that Mr. Lateef did ring me to say that the arrangement was in order. I received no letter from Cromptons about this. I have no note of any telephone conversation with Mr. Lateef. I can say that I received Lateef's reply the day before I paid out \$2000 on 8/10/69. I therefore thought it safe to payout. The mortgage for \$6000 was to be over this same property. If I remember right, it was to be payable on demand, with monthly payments of the same amount as in previous mortgage. I did not search the mortgage. I think the interest was 6½%. I made no notes at all. Whatever we discussed was acceptable to the plaintiff, and when

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mortgage was available we would have signed it. If nothing had been agreed I would not have paid defendant ₹2000. I did not ask plaintiff. As to clause 7 I think there was only one flat. I have deleted Clause 8. I do not agree that under Clause 10 a further agreement was envisaged. This was the final agreement. The only further document envisaged was a transfer. Clause 10 does not envisage another agreement after a draft has been settled. I did not consider it necessary that either of the parties should be separately advised. No Power of Attorney was produced for C.V. Das to sign for plaintiff. I knew there were 2 mortgages on property as I had search note in front of me. I did not cause a search of mortgages to be made. I did not consider it important to search 63056. I see Kl - I see Ex.J. The consideration stated on the face of the transfer is correct at ₹18000. I have nothing on the back. I was not treating the sale as at ₹18000 all inclusive. I do not say that the consideration on that transfer is truly stated. I did not put anything in the back because it was a draft sent to Lateef. He would have sent me a new mortgage and also second mortgage was to be discharged. I say definitely that the sale was not at all inclusive figure of ₹18,000. If transfer had been approved all documents would be stamped together. I agree that consideration should be truly stated. ₹18000 was the amount actually payable.

5 p.m. - adjourn to Friday 28th September, 1973 at 9.00 a.m.

Sgd. (K.A. Stuart),

JUDGE

27/9/73

Friday the 28th day of September, 1973 at 9.30 a.m.

Appearances as before.

CROSS-EXAMINATION (Resumed)

I say that consideration of ₹18000 shown on transfer is not truly stated. I did expect that Lateef would have had transfer executed. It was also my duty. I did not put in ₹18000 because I understood that to be the full purchase price. Existing mortgage was to be discharged and a fresh

In the
Supreme Court

Plaintiffs
Evidence

No. 8

Kantilal
Parshotam
Cross-
examination
(continued)

27th September
1973

28th September
1973

Kantilal
Parshotam
(continued)

In the
Supreme Court

Plaintiff's
Evidence

No. 8

Kantilal
Parshotam
Cross-
examination
(continued)

28th September
1973

mortgage for ₹6000 to be given. I would see that mortgage was discharged. At 10/10/69 Cromptons were solicitors for defendant and I was acting for plaintiff.

RAMRAKHA: Objects to question about discharge of mortgage as irrelevant.

JAMANDAS: This is important:

Witness: I did not put false consideration.

Q. Did you put the consideration falsely?

A. I do not agree.

My letter explains position. I stated figure of ₹18000 because that was amount payable by purchaser. I did not consider transfer as a final document. I did not expect Mr. Lateef to have the document executed in that form I agree that in my letter of 10/10/69 I asked him to sign it, if approved. He would have treated it as a draft. I have no figures worked out as to what was to be paid by plaintiff. I have no figures as to amount of interest owing on my file. Mr. Lateef would be person to see about final figures payable on first mortgage. I have never written to first mortgagee's solicitors to find out amount of first mortgage. I found out figures from Lateef. I did write to Scott & Co. for 2nd mortgagees. I have no notes of interest because I did not regard it as important. I agree I did not have sufficient money to complete this sale. Plaintiff was to bring balance of amount required when Lateef was ready. He brought ₹11,500 on October 7th. Sale would have gone through if money had been paid. Purchaser was going to pay ₹2000. My advice to purchaser was to have money available. I had not worked on a purchase price of ₹18000. I was to obtain consent of first mortgagee. I paid ₹2000 to defendant on 8/10/69. I was not his solicitor but he importuned me and I paid him. I did not think it necessary to mention that in my letter to Cromptons of 10/10/69. When dispute arose both parties were in touch with me - that was soon after 26/9/73*- I rang Lateef and asked for conference. The conference took place but I do not know the date. I did not take cheques to settle. I told Lateef that plaintiff ready to settle. I did not make out any cheques. I did not want the defendant to execute the transfer in the form sent by me. He said he was not ready to settle. Lateef said he had not had time to look at it. I deny that reason for failure of sale was that I wanted defendant to sign transfer in form

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*/sic7

that I had sent Lateef. I did not stamp this document and I do not know basis on which it was stamped. The ₹500 paid on deposit remained in my trust account until the day before yesterday. Nobody asked me for it. It was lying to credit of defendant. I paid it to Ramrakha to be paid into Court.

10 RE-EXAMINATION: When we had second conference with Lateef defendant said I am not selling and I will not go ahead with the matter. I did not think about whether plaintiff could find the money. I had no doubt that he would if necessary.

20 TO COURT: The purchase price of this property is ₹18000 with the amount of the mortgage to be taken over by the purchaser. It was ₹18000 and the amount of the mortgage whatever it might be. The parties gave me to understand that the mortgage was ₹8000 or so. Mr. Lateef said that we would work on a figure of ₹8000. I did not in fact know the exact amount of the purchase price.

Case for plaintiff.

No. 9

Proceedings

JAMNADAS: Defence elects not to call evidence.

RAMRAKHA: Defendant has not put forward his version of the story 'Chattels' in endorsement of claim is an error. Not suggested by defendant to witness that any chattels were included in sale.

30 Impossible to ascertain final price without working out figures - that is certain which can be made certain i.e. if sum ascertainable it is enforceable.

Look at Ex. B. There are a number of matters for adjustment:

1. First mortgage
2. Adjustment for town rates and electricity
3. Purchaser receiving rent from October, 1969.

Defendant did not ask for particulars. Para. 1 of Statement of Claim leaves out agreement. Letter of

In the
Supreme Court

Plaintiff's
Evidence

No. 8

Kantilal
Parshotam
Cross-
examination
(continued)

28th September
1973

Re-examination

No. 9

Proceedings

28th September
1973

In the
Supreme Court

No. 9

Proceedings

28th September
1973

(continued)

23/10/69 makes it clear that sale was for \$18000 plus amount of mortgage. Then Statement of Claim. Then asking for specific performance of agreement. Defendant has not led evidence as to lack of consensus. I say agreement should be interpreted. I say that words subject only to above mortgage qualifies purchase price \$18000. I say that property that is No. 63056 is to be read with purchase price. Court has uncontradicted evidence of P.W.1 and Parshotam. Plaintiff could have relied on verbal agreement. See *Howkins v. Price* (1947) 1 A.E.R.689. In that case plaintiff had only deposit. I am giving evidence as to ambiguity in document. Defendant has left both lines of defence open in his own pleadings. Should accept Parshotam's evidence in interpreting document. In view of part payments, matter falls outside Statute of Frauds. If there is any doubt about pleadings I would ask for leave to amend, even at this stage.

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COURT: I do not think that there is any doubt that what Court is being asked to do is interpret agreement. Remrakha Transfer not complete. Transfer could have been affected by indorsing memo of mortgage and then discharging mortgage and registering fresh mortgage. Parties did agree on terms and conditions and then defendant refuses to complete. There was Scott's letter of 10/10/69. Dispute on 12/10/69. Ramrakhas' letter of 23/10/69. Conference between those dates and defendant said he would not sell. Tender then not necessary. Inquiries will be necessary if we succeed as to rents and use and occupation, less rates, consent of mortgagee was not a condition of sale. Say that agreement contains all the necessary terms. *Saunderson v. Purchase* (1958) N.Z.L.R. 588: *Brown v. Gould* (1971) 2 A.E.R. 1505 shows that Court will only make agreement void for uncertainty if no other alternative see p.1507. Quite clear on agreement that price was \$18000 and \$8000 on mortgage.

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JAMNADAS: Refer to *Curran v. Rankin & Ors* 10 F.L.R. 212. Where defence did not call evidence p.216. Pleadings most material. As to correspondence refer to letter dated 23/10/69; shows that plaintiff was saying that price was \$18000 (and sale was subject to mortgage). Plaintiff's case up to beginning of evidence was that price was \$18000 and included chattels. See writ and

Statement of Claim and letter K.5. Para 1 of defence.

For 4 years plaintiff has been saying price was ₹18000.

I say that defence was caught by surprise, that they thought that price was ₹18000. Onus on plaintiff.

10 Refer to letter of 10/10/69. I suggest that this letter has effect of varying agreement, and there is an agreement which the defendant denies. Say that price at 26/9/69 was not ascertained. Letter of 10/10/69 throws doubt on matter. Does penultimate para of that letter refer to 1st mortgage or to a new mortgage, as far as payment of ₹2000 is concerned.

1 p.m. - adjourned to 2.15 p.m.

20 JAMNADAS: If parties do not know what agreement meant it is not for the Court to say. No evidence as to how amount paid in was made up. Tender should have been made and is necessary.

No contract ever arrived at. Parshotam said that it was duty of plaintiff to obtain consent of 1st mortgagee. In view of his evidence no substance in 7B of reply. Plaintiff has not shown in the pleadings that an agreement existed on 26/9/69. Plaintiff had not proved an agreement and hence part performance cannot arise. The existence of an agreement is a necessary preliminary to part performance. Refer to para 4 of Statement of Claim. 30 This is not borne out by evidence. Evidence about money plaintiff had available indicates that he did not know what price was. Transfer produced by Parshotam shows that he did not know what price was. Payment of ₹24000 into Court shows that plaintiff did not know what price was.

As to agreement:

(1) No agreement as to sale indicated by mention of chattels.

40 (2) Price is given as ₹18000 - defence says that the price had yet to be agreed upon. Agreement was tantamount to bare instructions. A further document was envisaged by the agreement upon which defendant was to be advised independently and that is borne out by letter of 10/10/69 Kl. Phrase added in deposit clause by P.W.3, indicates that parties did not know price. Letter Kl1 indicates that Commission of Stamps could

In the
Supreme Court

—
No. 9

Proceedings

28th September
1973

(continued)

In the
Supreme Court

No. 9
Proceedings
28th September
1973
(continued)

not ascertain duty payable, and this because he could not ascertain price. No date fixed for settlement and execution of transfer - that is a vital omission. Excision of terms as to outgoings shows there was no concluded sale. No evidence that tenants notified of sale. No mention of £2000 having been paid to defendant. Fong Lee v. Mitalal 12 F.L.R. 4. Here price was not agreed.

Refer to p.19 EF "Before specific 10

Also p.20 A-B as is said by Lord Esher ...

Refer to Stonham pages as stated in list of authorities 3, 4, 5, 23, 40, 62, 86, 102, 103, 319, 321, 324, 759, 765 and 794.

Denny v. Kerr (1904) 23 N.Z.L.R. 719.

p.62-63 and authorities given on that subject.

Bruce v. Garnet cited at p. 63.

Refer to Fry sections 380 et seq. Uncertainty at common law

Chapter 29 p.764 want of mutuality - there is 20

none here. p.765 para 1489 - p.795

County Hotel Limited v. London N.W. Railway (1918)

2 K.B. 251. Refer to Fry especially p. 164 para

353 6th Ed. 3 Halsbury Volume 36 p. 269 para 367

& p.270. Lack of mutuality is as stated in para 1 of defence 'chattels' and price £18000. Refer to

Curran v. Rankin 10 F.L.R. 212, 217

The decided cases B-C.

Also p.219 A-B.

p.220. 30

Refer to cap.177 section 38(1)

to show that document was not capable of being at once assessed.

Cap.206 section 6(1) section 19.

Old L.T. Ordinance cap.136 section 35(1)

White Book Order 6 Rule 2

this refers to plea of 'chattels' and of £18000.

O. 18/7/ & 18/7/5

Price was £18000

Also 18/8 40

Here Statute of Frauds has been pleaded

Document is such that it does not comply with Statute of Frauds.

Cheshire & Fifoot. 6th edition p.542, 543.

Effect of delay.

3 Hals. 14p. 646. para 1188.

Laches - plaintiff had carriage of action.

Refer to correspondence see K14.

I am still not sure what contract is. Ask for claim to be dismissed. 50

In the
Supreme Court
—
No.10
Judgment
25th February
1974
(continued)

took their instructions, and then and there wrote out an agreement for sale on a typewritten form which he uses and had the parties sign it. The agreement signed by the parties then, was a partly written and partly typewritten document. Unfortunately it was not as clear as it might have been in expressing the agreement at which Mr. Parshotam and the plaintiff's husband have said the parties arrived. When the parties came to Mr. Parshotam, it was on the understanding that he was to act for both of them, and it was on this basis that he made the agreement and subsequently two or three days later took the two of them to see the solicitor for the mortgagee, Mr. Abdul Lateef of Cromptons. Mr. Parshotam was unable to tell the Court exactly when this happened for he kept no record at all of any of his interviews with the parties, and I cannot help wishing that he had done so. It transpired that Mr. Abdul Lateef had acted previously for the defendant in some matters, and so it was arranged that he should act for the defendant in this matter as well as for the first mortgagee. Notwithstanding that Cromptons acted for defendant in the sale, however, Mr. Parshotam continued to act for him in discharging the second mortgage on the property. At the interview with Messrs. Cromptons, Mr. Parshotam secured Mr. Lateef's tentative consent on behalf of the first mortgagee, to the sale from the defendant to the plaintiff, on the basis that \$2000 would be paid in reduction of the existing first mortgage and a fresh mortgage given to Mr. Abdul Lateef's client for \$6000. He said that this tentative consent was confirmed a few days later and Mr. Parshotam then wrote a letter to Messrs. Cromptons confirming this arrangement and forwarding a draft transfer. That was on 10th October, 1969, and Messrs. Cromptons did not ever reply to that letter, nor did they return the transfer or advert to it in any way.

The parties wanted their sale to be effectuated as quickly as possible and it appears from the evidence that it was expected that a transfer would be signed almost immediately. By the middle of October however, the defendant had made up his mind - for what reason was not explained - that he did not want to go on with the sale.

When that happened, Mr. Parshotam dropped out of the picture and Messrs. Ramrakhas began to

act for the plaintiff. Their first action was to write a letter to the defendant on the 23rd October, 1969 asking him to perform his contract. On 3rd November, 1969 the defendant replied shortly stating that the agreement was null and void and that he proposed to defend any action brought by the plaintiff. On the 18th December, 1969 the plaintiff issued her writ. By the end of January, 1970 the defendant had filed no defence and plaintiff's solicitors very fairly notified Messrs. Cromptons, who were still acting for defendant, of their intention to enter judgment. A defence signed by Mr. Abdul Lateef was then filed on 9th February, 1970. Messrs. Ramrakhas had already written to Cromptons advising them that Mr. Abdul Lateef might be required as a witness, and on 26th March, 1970 they followed this up by suggesting that Cromptons should not act for the defendant. There was considerable correspondence on this subject and perhaps it is desirable that I should say that the fact that Mr. Lateef might be required as a witness was no reason why his firm should not act for the defendant. If Mr. Lateef were to give evidence he would certainly not be able to act as counsel, but there was no reason at all why some other member of his firm should not appear in Court on behalf of the defendant, and examine Mr. Lateef as a witness.

When the action came on for trial, the plaintiff's husband and Mr. Parshotam gave evidence on the main issue, and a clerk from Cromptons gave evidence about the amount owing on the first mortgage and produced a mortgage statement. This shows that at 30th September, 1969 \$8000 was owing for principal and \$390 for interest. The mortgage was repaid in 1971. The defendant called no evidence.

It is perhaps desirable to look a little more closely at the agreement and the pleadings before considering the matters at issue. The agreement is a curious document. After setting out the names of the parties it then has certain typed headings, the first of which is 'Subject matter of sale (land, buildings and chattels etc.)' against which Mr. Parshotam wrote 'Certificate of Title 9077 situated at Spring St., Suva, together with all improvements thereon'. Then the typing went on 'The said property is sold SUBJECT TO the following Mortgage,' and Mr. Parshotam added 'that is No. 63056'. Then follows the second typed heading

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'Purchase price; against which Mr. Parshotam wrote '\$18000 (Eighteen Thousand dollars)'. The third heading is 'Deposit and part payment of purchase price'. There were some further typed words on the form which Mr. Parshotam crossed out but he added other words so that the eventual result after that heading 'Deposit and part payment and purchase price', read 'The sum of \$500.00 now paid to Vendor or Parshotam & Co., Solicitors for the Vendors and the balance shall be paid upon execution of transfer subject only to above mortgage'. The next heading in the agreement is 'Terms and Conditions' and under this heading are typed ten paragraphs the first eight of which have sub-headings and the last two deal respectively with default and further assurance. The first paragraph deals with out-goings and the words in sub-paragraphs 1(a) and (b) were crossed out. 1(c) and 1(d) read:-

- (c) TOWN RATES: Paid for period ending 31st day of December, 1969. Purchaser to pay from the 1st January, 1970. 20
- (d) OTHER OUTGOINGS: Such as water rates, electricity, telephone etc. Vendor must pay up to 31st December, 1969.

Paragraph 2 is headed 'Possession' and as completed by Mr. Parshotam reads:-

- (a) Possession to be given by the Vendor and taken by the Purchaser as from the date of execution of transfer; 30
- (b) Vacant possession to be given by the Vendor and taken by the Purchaser as from the 31st day of December, 1969.
- (c) Details for tenants in occupation.
- | | |
|---------------------------------|------------------|
| Wing Chee Wai - house | } \$30 per month |
| Wing Chee Wai - monthly tenancy | |
- (d) Purchaser to receive rents from the 15th day of October, 1969.
- (e) Both parties to notify tenants of sale.

Paragraphs 3 and 4 are not material. Paragraph 5 is headed 'Consent' and provides (a) The consent 40

of the following person or persons are to be obtained -

- (ii) Mortgagee that is first mortgagee.
Sub-paragraph (i) is crossed out.

Paragraph 6 provides for the purchaser to pay costs and disbursements, paragraph 7 headed 'Special covenants and Conditions' contains this provision 'Vendor will occupy one flat now occupied by him free of rent up to 31st December, 1969'. Then paragraph 8 providing for time to be of the essence is deleted - paragraph 9 deals with what happens if the purchaser defaults and is not material to this action, and paragraph 10 is in the following terms:

"10. The Vendor and the purchaser mutually agree subject to all necessary consents (if any) to enter into the within transaction and to complete all documents necessary for carrying the same into effect such documents to contain the within-written terms and conditions and such other provisions as are usually inserted in documents of a similar nature pursuant to proper and usual conveyancing practice of solicitors in Fiji".

However the last sentence of that typed paragraph reading 'Settlement is to take place not later than the day of 1969 or upon such extension of time as shall be mutually agreed upon' is deleted. The document is signed by the defendant as Vendor and by 'C.V. Dess for and on behalf of Purchaser Gulab Ben' and both signatures are witnessed by Mr. Parshotam.

The writ as issued on 18th December, 1969 was endorsed as follows:-

"The plaintiff's claims is for specific performance of an agreement in writing dated the 26th day of September, 1969 whereby the defendant would sell and the plaintiff would buy land, buildings and chattels, being certificate of title No.9077 situate at Spring Street, Suva in the Colony of Fiji for the price of \$18,000.00 (Eighteen Thousand Dollars) and the plaintiff also claims damages for non-performance of the said agreement;

In the alternative the plaintiff claims damages for breach of contract;

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And the plaintiff claims the costs of
this action."

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It will be seen that it contained two important allegations which do not conform with the case now presented by the plaintiff. It alleges that the plaintiff bought land buildings and chattels, and it states the price to be \$18,000. That state of affairs continues when the statement of claim is filed and paragraph 1 of the statement of claim is as follows:-

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- "1. By an agreement in writing dated the 26th day of September, 1969 (which said agreement is annexed to the schedule hereto) made by and between the plaintiff and the defendant the plaintiff agreed to purchase and the defendant agreed to sell to the plaintiff the whole of the land, buildings and chattels situated at Spring Street, Suva and comprised in Certificate of Title No. 9077 and being Lot 1 on deposited plan No. 2177 being Allotment 1 Section D Toorak (part of) in the City of Suva in the Island of Viti Levu having an area more or less of 22.9 perches for the price of Eighteen Thousand Dollars (\$18,000.00)."

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Messrs. Cromptons, who were then acting for the defendant filed a defence of which the first paragraph reads as follows:-

- "1. THE Defendant admits signing a partially typewritten and partially handwritten document on the date stated in paragraph 1 of the Statement of Claim but says that the copy of document on the Schedule to the Statement of Claim does not correctly set forth the matters intended to be agreed upon, wherefore there was no consensus between the Plaintiff and the Defendant. In particular the Defendant states that there was no agreement relating to the sale of the chattels; that the intended consideration is not correctly stated in the said document that specific arrangements were to be made regarding settlement of the mortgage on the property and that the sale was to be subject to the making of a formal contract upon which the Defendant was to be independently advised. No such contract has been submitted to the Defendant for consideration nor has the

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Defendant had a copy of the document herein-
before referred to. Save as aforesaid the
Defendant does not admit paragraph 1 of the
Statement of Claim."

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10 The plaintiff filed a reply in which she avers
"that sale was complete but subject to the mortgage,
and the plaintiff through one Abdul Lateef, acting
for the defendant, and her Solicitor, Kantilal
Parshotam obtained the approval of the mortgagee to
the sale." Subsequently the defendant amended his
defence to plead the Statute of Frauds, and the
plaintiff amended her reply to meet that defence.
The defendant admitted that he had taken \$2000 from
Mr. Parshotam on the 8th October, 1969 but denied
that this was part performance and the plaintiff
pleaded the defendant was estopped by receipt of
that money from saying that the sale was not complete.

20 I shall deal immediately with the question of
the alleged sale of chattels. Mr. Ramrakha in his
final address, admitted that this mention of
chattels in the indorsement to the Writ and the
statement of claim was an error and I think it
unfortunate that he did not seek to correct that
error. It is however clear from the agreement that
there was no sale of chattels and the defendant in
his defence says there was no sale of chattels. I
am unable to understand, therefore, why so much time
was spent on this matter by counsel for the defendant.

30 The defendant's first contention was that the
sale was to be subject to the making of a formal
agreement upon which the defendant was to be inde-
pendently advised, and he pleads that he had not
had a copy of the agreement. I would observe that
if the defendant chooses not to give evidence or if
his solicitors choose not to write letters, he puts
himself in a position where the other party's
evidence, unless it is completely destroyed in cross-
examination, must be accepted. Nothing of that sort
happened here, and wherever the plaintiff has given
40 evidence on oath I accept that evidence in prefer-
ence to allegations in the defendant's pleadings
unsupported by evidence. On this particular issue
both the plaintiff's husband and Mr. Parshotam
were adamant that no further agreement was contem-
plated and I accept their evidence. This was not a
case like Curran v. Rankin (1964) 10 F.L.R. 212,
where there was no agreement signed. Here there
was an agreement signed by both parties, and the

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defendant in his pleadings has admitted that he did sign it. He says that it does not correctly set forth the matters agreed upon, and the burden of proof is upon him to show what matters were agreed upon, and to show how or why this was intended to be merely a preliminary agreement.

It was then strongly suggested that the agreement was void for uncertainty, and two points were urged in support of this argument. It was said, first of all, that the consideration was not correctly stated, and then it was said that there is no date set by the agreement for completion. I approach this matter on the basis enunciated by Megarry J. in *Brown v. Gould* (1971) 2 A.E.R. 1505, 1507 -

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" ... The Court is reluctant to hold void for uncertainly any provision that was intended to have legal effect."

I do not think there is any doubt that the agreement made between the plaintiff and the defendant on 26th September, 1969 was intended to have business and legal efficacy. That would appear to be established by paragraph 10 of the agreement already quoted.

20

On the subject of the consideration it is noteworthy that although the defendant says that the intended consideration was not set forth in the document, the evidence given by the plaintiff's witnesses that the consideration was £18000 plus the amount of the first mortgage has not been denied by the defendant. Bearing in mind that I have held this to be a formal contract and that normally parol evidence cannot be admitted to add to or vary it, I turn to the contract itself. The relevant sections of it are those portions, under the heading of 'subject matter of sale' which are set out above. It is clear that the property at Spring Street was being sold subject to a mortgage. It is also clear that the balance - that is to say the balance of the purchase price - was to be paid 'upon execution of transfer subject only to above mortgage'. To my mind that can only mean that a further sum of £17,500 was to be paid by the purchaser upon execution of a transfer subject to the mortgage 63056. In my view, then, consideration is stated as being £18,000 plus the amount of the mortgage 63056, and the amount of the mortgage is capable of being ascertained. Evidence was given that in fact the parties ascertained from Mr. Lateef

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10 that it was \$8000 and that I accept. Likewise I am
of the opinion that the plaintiff's writ and state-
ment of claim, although confusing are simply
incompetent pleading, and that the plaintiff should
not fail in her action by reason thereof. Further-
more, the defendant has at no stage said that he was
confused. It is also to be borne in mind that
defendant submits these two last mentioned matters
as indicative of the uncertainty of the agreement
and if the Court finds the agreement to be capable
of construction, these submissions fall to the ground.
I would add that unless these terms are construed in
the manner I have suggested, there would appear to
be no sense in the provision that the balance of the
purchase price namely \$17500 was to be paid upon
execution of a transfer 'subject only to mortgage
63056'. Considerable stress has been laid upon the
form of the draft transfer submitted by Mr. Parshotam
to Cromptons, for it showed a consideration of
20 \$18000 and said nothing about the mortgage to which
it was to be subject. While it is difficult to
understand why Mr. Parshotam should have tendered a
document in this form to the defendant's solicitors,
I think it shows an imperfect apprehension of the
mechanics of conveyancing rather than a confusion
as to the terms of the agreement between the parties.
I do not think that the form of this transfer in the
face of the letter of 10th October, 1969 and Mr.
Parshotam's evidence supports the defendant's sub-
30 mission that this showed that the parties were
uncertain as to the price.

40 The second objection raised against the agree-
ment is that it fixes no time for completion and
execution of transfer. It will be seen that the
purchase money was to be paid 'upon execution of
transfer'. Then the agreement made two provisos
about possession. It states (a) possession to be
given by the vendor and taken by the purchaser as
from the date of execution of the transfer, (b) vacant
possession to be given by the vendor and taken by
the purchaser as from the 31st December, 1969, and
then there was a further provision that the
purchaser was to receive rents from the 15th day of
October, 1969. This must be read with paragraph
seven of the agreement which provided that defendant
was to be entitled to occupy one flat in the build-
ing rent free up to 31st December, 1969, and that
town rates were to be paid by the Purchaser from
1st January, 1970 and other outgoings such as water
50 rates electricity and telephone etc. were to be paid

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by the Vendor up to 31st December, 1969. It should also, perhaps, be mentioned that in this agreement time was not of the essence as that particular clause of the typed agreement had been struck out. Mr. Jamnadas for the defendant says that the absence of a date for completion is a vital omission and refers to *Johnson v. Humphrey* (1964) 1 A.E.R.460. I doubt very much if in the present case the matter ever reached the stage at which the question of completion needed to be discussed, because the defendant had repudiated the agreement by the end of October and in fact no rents were ever paid to the plaintiff as provided by the agreement. However, it is perhaps, desirable that I should give my view on this aspect of the agreement. I do not think the presence of a date for completion is essential to the agreement. As was pointed out by Cooper J. in delivering the judgment of the New Zealand Court of Appeal in *Peddle v. Orr* (1906) 26 N.Z.L.R. 1240 at p.1251 referring to the memorandum in that case, 10

"The terms of the agreement are sufficiently stated in writing to satisfy the statute" (that is the Statute of Frauds). "The names of the parties, the description of the property sold, and the price are all stated in the memorandum. The omission of any date for delivery of possession or completion of the purchase does not affect the validity of the agreement. Where there is a clear offer to sell a specific property at a named price and a clear acceptance of that offer, but no time is stated for 30

delivery of possession or completion of the purchase, the law implies that the purchase is to be completed and possession delivered within a reasonable time: *Gray v. Smith*; (1890) 43 Ch.D.208; *Simpson v. Huges* (1897) 66 L.J. Ch.334; *Nosotti v. Auerbach* (1898) 79 L.T.413. I regard *Johnson v. Humphrey*, as also *Denny v. Kerr* (1904) 23 N.Z.L.R. 719 and *Hawkins v. Price* (1947) 1 A.E.R. 689 as cases, in which as Evershed J. put the matter in the last mentioned case, the date of possession was a fundamental part 40

of the bargain and to that extent a material term of the contract and because there was no note or memorandum of it the plaintiff failed. In each case it was fundamental because the date of possession depended upon one party or the other selling his own property. I would add that *Johnson v. Humphrey* is criticised in *Stonham on the Law of Vendor and Purchaser* - and Australian work - as being out of the main stream of decisions. Furthermore, so far as I can see, neither *Peddle v. Orr* nor *Lovelock v. Boyle* (1931) 50 N.Z.L.R. 808 was cited to Roxburgh J. 50

10 in Johnson v. Humphrey. Lovelock v. Boyle was a case in which one party repudiated the contract before an extended date for completion had arrived. I do not accept the suggestion of the defendant that the fixing of a date for completion and possession was essential to this contract. Moreover if it were, the defendant has given no evidence of the respects in which the written contract does not measure up to the arrangement or agreement made by the parties, and further in his pleadings he has simply pleaded to the agreement as set out in the statement of claim. If he now desires to dispute the agreement, he must both plead his version and give evidence of it. He has done neither.

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20 It was also suggested that the agreement did not comply with the Statute of Frauds, represented in Fiji by section 59 of the Indemnity Guarantee and Bailment Ordinance (Cap.208). In view, however, of the manner in which I have interpreted the agreement I think that every material term is included in the written contract. It was also suggested in argument that the contract was varied by Mr. Parshotam's letter of 10th October, 1969 to Cromptons, but that was not pleaded, and I am not prepared to consider the suggestion without that preliminary. I do not think it was seriously suggested that the failure of the plaintiff to tender the purchase money was fatal. I take the view that the defendant's letter of the 3rd
30 November, 1969 obviated the necessity of tender by the purchaser.

There is, then, in my view a valid contract, and even if the defendant in alleging it to be null and void by his letter of 3rd November, 1969 intended to rescind it, no ground has been put forward as to why the rescission should be effective and I therefore hold that the agreement remained in force after 3rd November, 1969.

40 I now turn to a consideration of the remedies to which the plaintiff is entitled. Her husband said in cross-examination that the plaintiff was at all times ready and willing to complete the sale and I accept this. She claims specific performance of her contract. One matter which has greatly exercised my mind is whether the plaintiff is entitled to have a decree in view of the allegation in her pleadings that there was a sale for \$18000 although the agreement for sale and the evidence

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given on her behalf shows otherwise. In this connection I bear in mind that although the defendant has vehemently objected that the pleadings allege a sale for £18000, he at no time objected to evidence being led that the sale was for £18000 plus the amount of the mortgage. He could, of course, not well do so, because this confusion that the plaintiff had herself created, enabled the defendant to say that the agreement was uncertain. Uncertainty in pleading does not appear in any of the books as a ground for rejecting a plaintiff's claim and I do not account it so here; I should perhaps add that plaintiff's solicitor in argument expressed his willingness to apply for amendment and although this was entirely a matter for him, it appeared to the Court that the principal issue was interpretation of the agreement, and not the merits or otherwise of the pleadings. I do not think that the defendant can successfully oppose a decree on this ground. The defendant further contended that the delay on the part of the plaintiff had been such that she was disentitled to specific performance. Fry on Specific Performance (6th edition) at p.514 points out that delay in either party in not prosecuting his right to the interference of the Court by the institution of an action, or in not diligently prosecuting his action may amount, for the purpose of specific performance, to an abandonment on his part of the contract. There are thus two angles to this question of delay. The first relates to the institution of the action. Here the plaintiff was told by the defendant's letter of 3rd November that the contract was void. She commenced her action on the 18th December. I would not regard that as such delay as to disentitle her to specific performance. Then I have to consider whether the leisurely manner in which the plaintiff has prosecuted her action will disentitle her to a decree. The defence, as I have said, was filed on 9th February, 1970, but no reply was filed until 7th April, and the summons for directions was not issued until 4 months later. The Court was ready to hear the action in February, 1971 but the day before the date fixed for trial, defendant filed a notice of change of Solicitors and the plaintiff consented to the case being removed from the list. Her solicitors do not appear to have been particularly diligent about obtaining another fixture. I have given some consideration to this matter, but although the plaintiff does not appear to have done very much about bringing the action to hearing, I suspect that

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10 this is the fault of her solicitors, and I have come to the conclusion that this delay is not sufficient to disentitle her to specific performance. The defendant was unable to refer to any particular authority on the point, and the only one I have been able to find is Moore v. Blake (1816) 3 E.R. 1148 where an action was begun in 1782, started off again in 1801, a dismissal in 1808 being reversed in the House of Lords in 1816 and specific performance decreed. The plaintiff's delay of four years pales into insignificance beside the delay in Moore v. Blake.

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20 The question of the consent to the mortgage is no longer relevant since the documents produced indicate that it has now been repaid. I note that the title shows that mortgage No.63056 has been discharged and replaced by another mortgage to the First National City Bank, and one might wonder how the Bank were induced to lend money on a property which was the subject of litigation, but perhaps that is no more pertinent to the present issue than to wonder how the Bank were able to get their mortgage registered at all, in view of the provisions of section 113 of the Land Transfer Act which is so radically different from section 130 of the former Land (Transfer and Registration) Ordinance Cap.136 of the Laws of Fiji (1955 edition). However, I am not persuaded that the existence of this mortgage should be any obstacle to a decree for specific performance.

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Finally I can see no indication or evidence of want of mutuality between the parties and I reject this submission. There appears then to be no reason why the plaintiff should not have specific performance of her contract and I so order.

40 I may say that had I considered that a decree of specific performance could have been made but was inappropriate in this case, I should have awarded damages under section 2 of The Chancery Amendment Act 1858 (Imperial) which is applicable to Fiji, and I would have followed Wroth v. Tyler (1973) 1 A.E.R. 897 and Fritz v. Hobson (1880) 14 Ch.D. 542 in assessing damages as at the date of hearing. The defendant did not use his best endeavours to complete and the purchaser would be entitled to damages for loss of bargain.

The Court therefore declares that as between

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Supreme Court

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(continued)

the plaintiff and the defendant the agreement of 26th September, 1969 ought to be specifically performed at the purchase price of \$26000 and orders accordingly. The amount of \$2000 was received by the defendant but has since been paid into Court. I also order that the following inquiries be made -

- (a) as to the amount due under the mortgage given by the defendant to First National City Bank.
- (b) As to the amount of rents and profits received by the defendant from the land comprised in C.T. 9077 from the date fixed by the said agreement namely 15th October, 1969 up to the date of completion. 10
- (c) as to outgoings paid or payable in respect of the said land from the date of the said agreement up to the date of completion.
- (d) as to the amount due by the defendant in respect of his occupation of the land calculated from 1st January, 1970. 20

There is no evidence as to what would be a proper amount for the defendant to pay for that portion of the premises occupied by him and this will have to be ascertained by the Chief Registrar by reference to rents of similar premises in the locality between January, 1970 and September, 1973. I also order -

- (1) that the amount found due by the defendant to the First National City Bank under mortgage under 122182 registered against C.T. 9077 be deducted from the amount payable by plaintiff to defendant and in the event of such amount exceeding the amount payable by the plaintiff to the defendant, plaintiff do recover the excess from the defendant. 30
- (2) that the defendant do pay the plaintiff the amount of the rents and profits received from the land comprised in C.T. 9077 since 15th October, 1969 less the outgoings, as fixed by the agreement.
- (3) that the occupation rent when ascertained be paid by the defendant to the plaintiff. 40
- (4) that the plaintiff do enter and perfect this decree for specific performance within 14 days

of the date of delivery of this judgment.
I hope by this last order to start off and to expedite the process of completion.

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There will be liberty to apply for any further order or direction in carrying out the decree for specific performance, and, indeed, liberty to apply generally.

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On the question of costs although the defendant has no merits, some of the delay has been caused by the plaintiff and her solicitors and because of this and the unsatisfactory nature of the plaintiff's pleadings, there will be no order for costs up to the date of judgment. Costs of necessary inquiries and the incidence of such costs will be fixed by the Chief Registrar.

(Sgd.) K.A. Stuart
JUDGE

25th February, 1974
LAUTOKA.

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No.11
Order

No.11
Order
25th February
1974

IN THE SUPREME COURT OF FIJI

Action No.297 of 1969

BETWEEN: GULAB BEN d/o Ratanji PLAINTIFF
A N D : AMRATLAL JAMNADAS s/o DEFENDANT
Jamnadas

BEFORE THE HONOURABLE MR. JUSTICE STUART
DATED AND ENTERED 25TH DAY OF FEBRUARY, 1974

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This action having been tried before the Honourable Mr. Justice Stuart, at the Supreme Court sitting at Suva, and the said Mr. Justice Stuart having on the 25th day of February 1974 ordered that judgment as hereinafter provided be entered for the plaintiff THIS COURT DOTH DECLARE that the agreement dated the 26th day of September 1969 in the pleadings mentioned ought to be specifically performed at a purchase price of \$26000 and carried into execution

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Supreme Court

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(continued)

AND DO TH ORDER AND ADJUDGE the same accordingly
AND IT IS ORDERED that the following further
inquiries be made that is to say

- (a) as to the amount due under the mortgage given by the defendant to First National City Bank.
- (b) As to the amounts of rents and profits received by the defendant from the land comprised in C.T.9077 from the date fixed by the said agreement namely 15th October, 1969 up to the date of completion. 10
- (c) As to outgoings paid or payable in respect of the date of the said agreement up the date of completion.
- (d) As to the amount due by the defendant in respect of his occupation of the land calculated from 1st January, 1970.

AND IT IS FURTHER ORDERED

- (1) that the amount found due by the defendant to the First National City Bank under mortgage number 22182 registered against C.T.9077 be deducted from the amount payable by plaintiff to defendant and in the event of such amount exceeding the amount payable by the plaintiff to the defendant, plaintiff do recover the excess from the defendant. 20
- (2) that the defendant do pay the plaintiff the amount of the rents and profits received from the land comprised in C.T.9077 since 15th October, 1969 less the outgoings, as fixed by the agreement. 30
- (3) that the occupation rent when ascertained be paid by the defendant to the plaintiff.
- (4) that the plaintiff do enter and perfect this decree for specific performance within 14 days of the date of delivery of this judgment.

AND IT IS FURTHER ORDERED that either party be at liberty to apply for any further order or direction in carrying out the decree for specific performance, and that there be liberty to apply generally and that each party do pay its costs of this proceedings 40

up to the date of the judgment, but that the costs of necessary inquiries and the incidence of such costs be fixed by the Chief Registrar.

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Supreme Court

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1974

(continued)

BY THE COURT

(Sgd.) S. Deo

CHIEF REGISTRAR

No. 12

Notice and Grounds of Appeal of Defendant

In the Court
of Appeal

No.12

Notice and
Grounds of
Appeal of
Defendant

18th April
1974

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

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No. 15 of 1974

Supreme Court Civil Action
No.297 of 1969

BETWEEN: AMRATLAL JAMNADAS s/o
Jamnadas

DEFENDANT/
APPELLANT

A N D : GULAB BEN d/o Ratanji

PLAINTIFF/
RESPONDENT

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TAKE NOTICE that the Fiji Court of Appeal will be moved at the expiration of fourteen days from the service upon you of this Notice of Appeal, or so soon thereafter as Counsel can be heard, by Counsel for the abovenamed defendant for an order that the Judgment herein of the Honourable Mr. Justice K.A. Stuart given on the trial of the above-mentioned action on the 25th day of February 1974 whereby it was adjudged that the agreement dated the 26th day of September, 1969 in the pleadings mentioned ought to be specifically performed at a purchase price of \$26,000.00 and carried into execution and ordering the further inquiries referred to in the said Judgment to be made be wholly set aside and that Judgment be entered in the said action for the defendant with the costs of the action.

30

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

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of Appeal

No.12

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Grounds of
Appeal of
Defendant

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1974

(continued)

AND FURTHER TAKE NOTICE that the grounds of
this application are:-

1. The learned Judge erred in fact and in law in holding that the plaintiff's Writ of Summons and Statement of Claim alleging the price for the sale under the alleged agreement to be \$18,000.00 were although confusing, simply incompetent pleadings, and that the plaintiff should not fail in her action by reason thereof.
2. The learned Judge erred in fact and in law in failing to consider that from the date of the alleged agreement on the 26th day of September, 1969 in the correspondence and in her pleadings right down to the trial on the 27th day of September, 1973 it was alleged by the plaintiff that chattels were included in the sale under the alleged agreement. 10
3. The learned Judge erred in fact and in law in holding that it was for the defendant to object to the plaintiff leading evidence in conflict with her pleadings. 20
4. The learned Judge erred in fact and in law in failing to consider the failure by Counsel for the plaintiff at any stage of the proceedings to make application for amendment of the plaintiff's pleadings which were in conflict with the evidence led by the plaintiff.
5. The learned Judge erred in fact and in law in stating that the principal issue before the Court was interpretation of the agreement and not the merits or otherwise of the pleadings. 30
6. The learned Judge erred in fact and in law in failing to consider that up to the date of hearing of the action on the 27th day of September 1973 the sale under the alleged agreement of land and buildings comprised in Certificate of Title No. 9077 at Spring Street, Suva together with chattels for the price of \$18,000.00 were the matters at issue before the Court. 40
7. The learned Judge erred in fact and in law in failing to consider that the alleged agreement was made conditional on the consent of the first mortgagees being obtained, and that

there was no evidence before the Court of the first mortgagees consenting to the sale under the alleged agreement taking place subject to the first mortgage.

In the Court
of Appeal

No.12

Notice and
Grounds of
Appeal of
Defendant

18th April
1974

(continued)

- 10 8. The learned Judge erred in fact and in law in failing to consider that variation of the alleged agreement was not pleaded by the plaintiff, and that evidence of variation of the alleged agreement tendered by the plaintiff was hearsay and inadmissible, and failed to satisfy the requirements of Section 59 of the Indemnity, Guarantee and Bailment Ordinance (Cap.208) and Section 4 of the Statute of Frauds.
- 20 9. The learned Judge erred in fact and in law in failing to consider that Mr. Abdul Lateef engaged in the ordinary way to act as the Solicitor for the defendant had no authority either to contract on his behalf or to vary the alleged agreement, or to bring into existence a sufficient memorandum to satisfy Section 59 of the Indemnity, Guarantee and Bailment Ordinance (Cap.208) and Section 4 of the Statute of Frauds.
- 30 10. The learned Judge erred in fact and in law in failing to consider at all that the Defence filed and delivered by Messrs. Cromptons for the defendant on the 9th day of February, 1970 was signed by Mr. Abdul Lateef of the said firm.
- 40 11. The learned Judge erred in fact and in law in holding that the draft transfer submitted by Mr. K. Parshotam to Messrs. Cromptons with the letter dated 10th October, 1969 and showing a consideration of \$18,000.00 and saying nothing about the mortgage to which it was to be subject showed an imperfect apprehension of the mechanics of conveyancing on the part of Mr. K. Parshotam, rather than a confusion as to the terms of the alleged agreement between the parties.
12. The learned Judge erred in fact and in law in failing to consider that the alleged agreement was incapable of being assessed for stamp duty under the provisions contained in the Stamp Duties Ordinance (Cap.177), and was insufficiently stamped under the said Ordinance.

In the Court
of Appeal

No.12

Notice and
Grounds of
Appeal of
Defendant

18th April
1974

(continued)

13. The learned Judge erred in fact and in law in failing to consider that there was no consensus ad idem between the plaintiff and the defendant when the alleged agreement was signed on the 26th day of September, 1969.
14. The learned Judge erred in fact and in law in holding that the presence of a date for completion and possession was not essential to the alleged agreement.
15. The learned Judge erred in fact and in law in failing to consider that the alleged agreement was void for uncertainty. 10
16. The learned Judge erred in fact and in law in holding that the failure of the plaintiff to tender the purchase money to the defendant under the alleged agreement was not fatal to the plaintiff's case.
17. The learned Judge erred in fact and in law in failing to consider that the plaintiff was estopped by her conduct and the conduct of her Solicitors, and from the correspondence and her pleadings, from attempting to prove at the hearing of the action allegations which were directly contrary to that which the plaintiff and her Solicitors had deliberately represented to be the facts. 20
18. The learned Judge erred in fact and in law in failing to hold that the alleged agreement was an insufficient memorandum in writing to comply with Section 59 of the Indemnity, Guarantee and Bailment Ordinance (Cap.208) and Section 4 of the Statute of Frauds. 30
19. The learned Judge erred in fact and in law in holding that under the Defence filed and delivered by the defendant the burden of proof was upon the defendant to show what matters were agreed upon, and to show how or why the alleged agreement was intended to be merely a preliminary agreement.
20. The learned Judge erred in fact and in law in not fully considering the delay by the plaintiff in the prosecution of the action, and in stating that the delay was the fault of the plaintiff's Solicitors and not that of the plaintiff. 40

21. The learned Judge erred in fact and in law in holding that there was a concluded contract under the alleged agreement on the 26th day of September, 1969 at the purchase price of \$26,000.00 and in ordering that the alleged agreement be specifically performed by the defendant, and in ordering the inquiries referred to in the said Judgment and the further consequential relief to the plaintiff.

In the Court of Appeal

No.12

Notice and Grounds of Appeal of Defendant

18th April 1974

(continued)

10 DATED this 18th day of April 1974.

(Sgd.) ?

GRAHAME & CO.

Solicitors for the defendant/appellant.

This Notice of Appeal is filed by Messrs. Grahame & Co. of Mansfield Chambers, 165 Victoria Parade, Suva, the Solicitors for the defendant/appellant.

To the abovenamed plaintiff/respondent and/or her Solicitors Messrs. Ramrakhas of Marks Street, Suva.

No.13

No.13

20

Notice and Grounds of Appeal of Plaintiff

Notice and Grounds of Appeal of Plaintiff

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

5th July 1974

CIVIL APPEAL

No.15 of 1974

BETWEEN: AMRATLAL JAMNADAS
(s/o Jamnadas)

APPELLANT
(Original Defendant)

AND: GULAB BEN (d/o Retanji)

RESPONDENT
(Original Plaintiff)

30

LET all parties concerned attend before this Court on Thursday the 18th day of July, 1974 at the hour of 9.30 o'clock in the forenoon on the hearing of an application on behalf of the abovenamed respondent that she be given leave under the provisions of Rule 19 of the Court of Appeal Rules that the judgment of the Supreme Court be varied by

In the Court
of Appeal

No.13

Notice and
Grounds of
Appeal of
Plaintiff

5th July

1974

(continued)

- (a) granting costs in favour of the respondent
- (b) granting an order for possession in favour of the respondent
- (c) an order postponing the mortgage of the First National City Bank to the rights of the respondent on the grounds that
 1. The Learned trial Judge erred in depriving the respondent of her costs as the basic issue before the Court was the enforceability of the Agreement for Sale and Purchase, the terms whereof had been signed by the Appellant, and could have been enforced without reference to any delay by the respondent's solicitors, or any defects in their pleadings 10
 2. The learned trial Judge ought to have made an order for vacant possession in favour of the Respondent
 3. The mortgage of the First National City Bank ought to have been postponed to the rights of the respondent as the mortgage was subject to her caveat. 20

DATED this 5th day of July, 1974.

R A M R A K H A S

Per: K.C. Ramrakhas

To the abovenamed Appellant and/or his Solicitors
Messrs. Grahame & Company of Suva, Fiji.

This Notice of Motion to Cross-Appeal is filed by
RAMRAKHAS the Solicitors for the Respondent whose
address for service is at 77 Marks Street, Suva,
Fiji. 30

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No.15 of 1974

Between: AMRATLAL JAMNADAS (s/o Jamnadas)
Defendant/Appellant

- and -

GULAB BEN (d/o Ratanji)
Plaintiff/Respondent

In the Court
of Appeal

No.14

Judgment of
Marsack J.A.

31st July
1974

10 Hearing: 18th-19th July, 1974
Judgment: 31st July, 1974

C.L. Jamnadas for Appellant
K.C. Ramrakha for Respondent

This is an appeal against a judgment of the Supreme Court sitting at Lautoka delivered on 25th February, 1974. There is also a cross-appeal by the respondent.

20 The respondent as plaintiff in the Supreme Court claimed specific performance of an agreement between the appellant and the respondent dated 26th September, 1969 concerning a freehold house property situated at Spring Street, Suva. The respondent's husband acted on behalf of the respondent throughout. The parties - that is the appellant and the respondent's husband - went together to a Suva solicitor who on their instructions prepared an agreement which was signed by them both. In preparing the agreement the solicitor used a typewritten form which was headed "Memorandum of Terms and Conditions of Sale". The executed document was partly written and partly typewritten. For the purpose of this
30 judgment it does not seem necessary to set out the document in full. It describes the property as the land in Certificate of Title 9077 together with all improvements thereon; and it is specified that the property is sold subject to mortgage number 63066. The amount secured by this mortgage is not stated. The purchase price is set out at \$18,000. The agreement further provides that the consent of the first mortgagee is to be obtained to the sale. On
40 8th October, 1969 a deposit of \$2,000 was paid to the vendor on account of the purchase price.

At the time the document was prepared and signed

In the Court
of Appeal

No.14

Judgment of
Marsack J.A.

31st July
1974

(continued)

Mr. Parshotam, the solicitor concerned, was acting for both parties. Two or three days later Mr. Parshotam took both parties to see the solicitor for the mortgagee, Mr. Abdul Lateef of Cromptons. It was then arranged that Messrs. Cromptons should act for the vendor on the sale. Mr. Lateef consented to the sale on the basis that \$2,000 would be paid in reduction of the existing first mortgage and a fresh mortgage given for the balance \$6,000. On the 10th October, 1969 Mr. Parshotam wrote to Messrs. Cromptons confirming this arrangement and forwarding a draft transfer for perusal, and execution by the vendor if approved. That letter was never answered and the transfer was neither signed nor returned.

10

Shortly after that date Mr. Parshotam ceased to act for the purchaser and Messrs. Ramrakhas took over. On the 23rd October, 1969 this firm wrote to the vendor, the appellant, with a carbon copy to Messrs. Cromptons, calling upon him to complete in terms of the agreement. On the 3rd November, 1969 the appellant wrote back to the solicitors claiming that the agreement mentioned in their letter was null and void. He did not specify any grounds for this. On the 18th December, 1969 the respondent issued a writ claiming specific performance; but after considerable delay, during which amended pleadings were filed, a hearing took place on 28th and 29th September, 1973. Judgment was delivered on 25th February, 1974 declaring that the respondent was entitled to a decree of specific performance, with some consequential relief; but refusing an order for costs because of the delay, due in some measure to the plaintiff, and to the unsatisfactory nature of her pleadings. It is against that judgment that this appeal is brought. The respondent's cross-appeal is limited to the questions of costs and of vacant possession.

20

30

Twenty-one grounds of appeal were filed on behalf of the appellant. These are lengthy, and overlap to a considerable degree. They will not be set out in full in this judgment; but the main issues between the parties, in respect of which Mr. Ramrakha was called upon to reply, may be shortly set out as follows;

40

1. That the evidence tendered on behalf of the respondent was inconsistent with her pleadings, and that the learned trial Judge erred in fact

and in law in holding that the respondent's statement of claim though confusing was simply incompetent pleadings and that she should not fail in her action on that ground.

In the Court
of Appeal

No.14

Judgment of
Marsack J.A.

31st July
1974

(continued)

2. That the document in question was not a final contract between the parties but merely an agreement to enter into an agreement.
3. That the agreement was void for uncertainty in that:-

10

(a) the total consideration was not correctly stated and the amount due under first mortgage was not shown;

(b) no date was fixed for settlement and possession;

(c) the respondent contended throughout until the date of hearing that the property to pass under the agreement included unspecified chattels.

20

4. That there was an insufficient memorandum of the agreement to comply with section 59 of the Indemnity, Guarantee and Bailment Ordinance (Cap.208) and section 4 of the Statute of Frauds.

5. That there was no consensus ad idem between the parties to the alleged agreement.

30

With reference to the first ground counsel for the appellant pointed out that the statement of claim specified a purchase price of \$18,000, whereas the evidence for the respondent set up an agreement for sale at \$18,000 plus the amount owing on mortgage 63066. It cannot be said that the appellant was in any way deceived or prejudiced by the statement of claim, as there was attached to it a copy of the document relied upon; and this makes it clear that the property sold for \$18,000 was subject to the mortgage. The learned trial Judge's consent on the pleadings was in my opinion justified; but as the Judge says, there is no reason that the respondent should fail in her action on that ground.

40

A further objection to the pleadings concerns the claim for chattels, a claim which was withdrawn by the respondent only when the action came on for

In the Court
of Appeal

No.14

Judgment of
Marsack J.A.

31st July
1974
(continued)

trial. The reason for the inclusion of the claim for unidentified chattels is no doubt the heading of one paragraph in the typed form of Memorandum of Terms and Conditions of Sale used by Mr. Parshotam. This paragraph is headed "Subject Matter of Sale: (land, building, chattels etc.)". In any event the claim for chattels was withdrawn at the time of the hearing. This really amounted to an amendment in the pleadings, which a party is entitled to apply for at any time; and though the other party might on that account in certain circumstances be entitled to costs, it furnishes no ground for interfering with a judgment. 10

The second ground of appeal is also in my opinion untenable. The document contains a clause reading

"The Vendor and the Purchaser mutually agree subject to all necessary consents (if any) to enter into the within transaction and to complete all documents necessary for carrying the same into effect such documents to contain the within-written terms and conditions and such other provisions as are usually inserted in documents of a similar nature pursuant to proper and usual conveyancing practice of Solicitors in Fiji." 20

Mr. Parshotam, who at the time the agreement was signed, was acting for both parties, said in evidence of the document, "This is not instructions for a sale, it is a sale and purchase agreement". Pursuant to it the respondent as purchaser paid to the appellant a sum of \$2,000 as a deposit and in part payment of the purchase money on the 8th October, 1969, and the appellant retained that money until the 20th day of September, 1973 when it was paid into Court. At the hearing of the appeal counsel for the appellant in answer to a question from the Court, said 30

"I say that there never was an agreement between the parties although the document was signed and \$2,000 paid." 40

It is hard to understand upon what basis this submission was made. Taking the whole of the facts into consideration I am firmly of the opinion that this document was intended to be an agreement for sale and purchase and not merely an agreement to negotiate.

The main argument tendered by counsel for the appellant concerned the third ground, namely that the agreement was void for uncertainty. He submitted that it was impossible from a study of the document to say exactly what it meant. Although the property was to be sold subject to a mortgage there was, counsel pointed out, no indication in the document as to what amount was secured by the mortgage, and in particular what amount was owing by way of arrears of interest. He argued that although the document provided for the apportionment of insurance premiums, rates, electricity and telephone accounts nothing was said with regard to interest under the mortgage. He submitted that interest could not properly be included in the term "other outgoings" provided for in the document. He further contended that no date was fixed for settlement, the provision in the agreement on the subject being in the following terms:

In the Court
of Appeal

No.14

Judgment of
Marsack J.A.

31st July
1974
(continued)

10

20 "POSSESSION

(a) Possession to be given by the Vendor and taken by the Purchaser as from the date of execution of Transfer.

(b) Vacant possession to be given by the Vendor and taken by the purchaser as from 31st day of December, 1969."

It may well be that the document in this case falls within the category concerning which Lord Halsbury, L.C. said in Brunning v. Odhams Bros. Ltd. 75 L.T. 602 at p.603

30

"I cannot forbear from saying that this case is an example of a not very infrequent course of litigation at the present time, which makes one lament that there is not some more perfect system for enabling the parties on each side to know what it is that they have to meet, which, I believe, in a great many instances, would save the parties from a protracted litigation in the end by insisting on a little more precision at the beginning."

40

Be that as it may, the duty of the Court is to look at the document to find if upon a reasonable interpretation of its terms it can be held to be a binding contract.

Counsel for the appellant relied strongly on his argument that the document did not set out with

In the Court
of Appeal

No.14

Judgment of
Marsack J.A.

31st July
1974

(continued)

certainly the price payable for the property in that the amount of the principal sum due under mortgage was not stated; that the arrears of interest were not known and the document did not make it clear whether the liability for the interest owing at the date of settlement fell upon vendor or purchaser. He cited the general principle stated in Stonham on Vendor and Purchaser at p.62 para. 89:

" In all sales of land, the price is an essential ingredient, and where this is neither ascertained nor rendered ascertainable (without further agreement of the parties) the contract is void for incompleteness, and incapable of enforcement. More correctly stated, there is no contract as there is no consensus ad idem. The parties must be ad idem as to the price." 10

The learned trial Judge held that the document itself was clear on the subject of the consideration for the transfer. This in his view was \$18,000 plus the amount of mortgage 63066, which amount was capable of being ascertained. Accordingly he held that the objection to the validity of the document on the ground that the price was not stated could not be sustained. Some question may well have arisen as to whether the outstanding interest was or was not an "outgoing" and accordingly was to be apportioned in terms of the agreement; but this, in my opinion, is solely a matter of the construction of the document - which the Court can decide - and not of its essential validity. 20 30

The argument that the agreement is void because no date is fixed for settlement must also in my view fail. The two sub-clauses of clause 3 quoted above may appear on the face of it to be mutually inconsistent, but they at least do provide for the execution of the transfer and for settlement to be effected. If the date is not to be taken as 31st December, 1969 then the document must be construed to provide that settlement will take place within a reasonable time. As is said by Beattie J. in Valley Ready Mix Limited v. Utah Finance (1974) 1 N.Z.L.R. 123 at p.129: 40

"It is well established that if a date for the performance of the condition is not

stipulated in the contract, the condition (in this case payment of the balance of the purchase price on title being given) must be fulfilled within a reasonable time."

In the Court
of Appeal

—
No.14

Judgment of
Marsack J.A.

31st July
1974
(continued)

10 The last point made by counsel for the appellant on the question of uncertainty was that the document mentions chattels, without specifying what chattels; and that it had been the contention of the respondent throughout, until the time of the hearing of the appeal, that chattels were included in the agreement. In my view the learned trial Judge set out the position correctly when he said:

"It is however clear from the agreement that there was no sale of chattels and the defendant in his defence says there was no sale of chattels."

20 It is probable that this mistake on the part of the respondent arose, as has been pointed out, from the mention of chattels in the heading of one paragraph of the agreement. In any event misconstruction by one party of the meaning of a document cannot in itself be sufficient ground for holding that the document is not a binding contract. If in the opinion of the Court the meaning of the document can be construed with certainty, then a misunderstanding by one of the parties cannot invalidate the document unless it can be shown that it did not express the real agreement between the parties. Accordingly I would hold that the appeal could not be allowed on any of the grounds set out under No.3.

30 Ground 4 concerns the sufficiency or otherwise of the memorandum of agreement in terms of section 59 of the Indemnity, Guarantee and Bailment Ordinance (Cap.208) and section 4 of the Statute of Frauds. In my opinion the statutory provisions can have no application. As I see it, the learned trial Judge was correct when he said that every material term is included in the written contract; and I respectfully adopt the reasoning of the New Zealand Court of Appeal in Peddle v. Orr 26 N.Z.L.R. 1214 at p.251 cited in the judgment.

40 On the fifth ground of appeal counsel argued that there was no consensus ad idem between the parties. In support of this ground he puts forward virtually the same submissions as are dealt with supra under the question of uncertainty; that the

In the Court
of Appeal

No.14

Judgment of
Marsack J.A.

31st July
1974

(continued)

purchaser thought she was buying some unspecified chattels whereas the vendor was not selling any chattels; that though the price was specified as £18,000 the parties had not even discussed what amount was to be taken over under mortgage 63066; and that no agreement had been reached as to the date of settlement and the date upon which possession of the property was to be given. As for the reasons already given I conclude that the learned trial Judge was right in holding that every material term was included in the written contract, then it must follow in my view that there was such a consensus as was necessary to form the basis of a valid agreement.

10

For these reasons I would hold that the appeal must fail.

On the cross-appeal counsel for the respondent argues that although the judgment ordered that the appellant "do enter and perfect this decree for specific performance within 14 days", the judgment does not provide a date for giving vacant possession. I should have thought personally that an order for specific performance within 14 days would have included, at least by necessary inference, an order for giving possession within the same period. Such possession would, of course, be subject to existing tenancies, if any, in favour of third persons. To clarify the position I would be prepared to add to the order dismissing the appeal an order on the cross-appeal that the appellant do give possession of the property sold, subject to existing tenancies, within 14 days of the date of this judgment.

20

30

On the question of costs I would be reluctant to interfere with the exercise of the learned trial Judge's discretion in that matter in the Court below. I would, however, order that respondent's costs of this appeal be paid by the appellant.

(Sgd.) C.C. MARSACK
.....

JUDGE OF APPEAL

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No.15 of 1974

Between: AMRATLAL JAMNADAS s/o Jamnadas
Defendant/Appellant
and
GULAB BEN d/o Ratanji
Plaintiff/Respondent

In the Court
of Appeal

No.15

Judgment of
Gould V.P.
31st July
1974

10 Dates of Hearing: 18th-19th July, 1974
Delivery of Judgment: 31st July 1974

C.L. Jamnadas for Appellant
K.C. Ramrakha for Respondent

I have had the advantage of reading the judgment of my learned brother Marsack J.A. in this matter and I agree with his reasoning and conclusions and the order he proposes.

20 The members of the Court being of the same opinion the appeal is dismissed with costs and on the cross appeal there will be the order for possession proposed in the judgment of Marsack J.A.

(Sgd.) T.J. GOULD
VICE PRESIDENT

No.16

Judgment of Bodilly J.A.

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No.15 of 1974

30 Between AMRATLAL JAMNADAS (s/o Jamnadas
Defendant/Appellant
and
GULAB BEN (d/o Ratanji)
Plaintiff/Respondent

No.16

Judgment of
Bodilly J.A.

31st July
1974

Hearing: 18th-19th July, 1974
Judgment: 31st July, 1974

C.L. Jamnadas for Appellant
K.C. Ramrakha for Respondent

In the Court
of Appeal

No.16

Judgment of
Bodilly J.A.

31st July
1974
(continued)

I have read the judgment of Mr. Justice Marsack and with respect I agree with his conclusions for the reasons which he has given. I also agree that for avoidance of doubt this court should make the further order which he suggests.

As regards costs I too would not interfere with the learned trial judge's order in the court below but I think that in the case of the proceedings in this court costs should follow the event in the usual way.

10

(Sgd.) J. BODILLY
.....
JUDGE OF APPEAL

SUVA.

No.17

Order

31st July
1974

No. 17

Order

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

No. 15 of 1974

Supreme Court Civil Action
No. 297 of 1969

20

BETWEEN: AMRATLAL JAMNADAS s/o Jamnadas
DEFENDANT/APPELLANT

A N D : GULAB BEN d/o Ratanji
PLAINTIFF/RESPONDENT

WEDNESDAY THE 31ST DAY OF JULY, 1974

UPON MOTION by way of Appeal from the Judgment dated the 25th day of February 1974 made unto this Court by Counsel for the Appellant (Original Defendant)

AND THE Motion by Way of Cross Appeal made unto this Court by Counsel for the Respondent (Original Plaintiff) by leave of this Honourable Court granted on the 18th day of July 1974

30

AND UPON HEARING MR. CHIMAN LAL JAMNADAS of Counsel for the Appellant and MR. KARAM CHAND RAMRAKHA of

Counsel for the Respondent

In the Court
of Appeal

AND UPON READING the said Judgment

No.17

AND MATURE deliberation thereupon had

Order

IT IS THIS DAY ORDERED that the Judgment of the Honourable Mr. Justice K.A. Stuart in the Supreme Court of Fiji dated the 25th day of February 1974 be confirmed, and that the Appeal do stand dismissed out of Court

31st July
1974
(continued)

10

AND IT IS FURTHER ORDERED that the Appellant do give to the Respondent vacant possession of all the premises comprised in Certificate of Title No. 9077 and being Lot 1 on deposited plan No.2177 being Allotment 1 Section D Toorak (part of) in the City of Suva in the Island of Vitilevu having an area more or less of 22.9 perches, subject to existing tenancies, (if any) in favour of third persons, within fourteen days from the date hereof

AND IT IS FURTHER ORDERED that the Appellant do pay to the Respondent her costs of this Appeal.

20

BY ORDER

L.S. (Sgd.) S. DEO

REGISTRAR

No. 18

Order granting Final Leave to Appeal to Her Majesty in Council

No.18

Order granting Final Leave to Appeal to Her Majesty in Council

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

No. 15 of 1974

Supreme Court Civil Action
No. 297 of 1969

16th August
1974

30

BETWEEN: AMRATLAL JAMNADAS s/o Jamnadas
DEFENDANT/APPELLANT

A N D : GULAB BEN d/o Retanji PLAINTIFF/RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE C.C. MARSACK,
JUDGE OF APPEAL IN CHAMBERS

In the Court
of Appeal

No.18

Order
granting
Final Leave
to Appeal to
Her Majesty
in Council

16th August
1974
(continued)

FRIDAY THE 16TH DAY OF AUGUST, 1974

UPON READING the Notice of Motion for Leave to Appeal to Her Majesty in Council herein dated the 6th day of August, 1974 AND UPON HEARING MR. F.M.K. SHERANI and MR. C.L. JAMNADAS of Counsel for the appellant and MR. K.C. RAMRAKHA of Counsel for the respondent IT IS THIS DAY ORDERED that the appellant be granted leave to appeal to Her Majesty in Council and that execution of the Judgment of the Supreme Court as varied by this Honourable Court be stayed pending the decision of Her Majesty in Council on the following terms:-

- (a) Signed transfer of land in dispute, free of encumbrance, with Certificate of Title to the land and insurance policy covering the buildings thereon to be handed to the Chief Registrar, Supreme Court, within 7 days and held in escrow by the Chief Registrar until determination of the appeal. 10
- (b) Appeal to be prosecuted with all due diligence. 20
- (c) Stay of execution to be operative until date of determination of appeal with leave to respondent to apply at any time after six months from this date for revocation of stay on the ground of undue delay in prosecution of the appeal.
- (d) Appellant to grant no new tenancies of the property or any part thereof without leave of the Chief Registrar.
- (e) Appellant to lodge a bond to the satisfaction of the Chief Registrar in the sum of \$1,000.00 as security for costs within 21 days. 30

BY ORDER

Sgd. Illegible

REGISTRAR

C/1501

SECURITY
 C.T. 9380
 Stk Pacific Ins Co Ltd Policy No. 2391
 Mlge No: 63056

INTEREST
 RATE $6\frac{1}{2}\%$
 PENAL RATE
 HOW PAYABLE
 DUE DATES
 FROM *Quarterly*
 RESTS

INSURANCE
 AMOUNT £300-0-0
 DATE PAID
 PREM £43-6-3
 DUE DATE *11th April 1958*
 OFFICE *Southern Pacific Ins. Co. Ltd*
 POLICY No. 2391
 COVERING *Building*

AMOUNT OF ADVANCE £5195. 19. 11.

DUE DATE 19.....
 DUE DATE 19.....

DATE	FOLIO	ADVANCES	REPAYMENTS	BALANCE	INTEREST DUE		INTEREST PAID	
					DATE	PRINCIPAL	INTEREST	DATE
1959								
Dec 29		Adv.		5195 19 11	Mar 31	84 8 7	Apr 4	84 8 7
1960								
Apr 4			140 4 5	5055 8 6	June 30	82 2 9	July 14	82 2 9
July 14			142 17 3	4912 11 3	Sept 30	159 13	Oct 14	159 13
1961			145 3 4	4767 7 11	Dec 31	19 16 8	Jan 1	19 16 8
1962			148 5 3	4619 2 2	Mar 31	17 7 2	Apr 14	17 7 2
1963			147 11 3	4471 11 1	June 30	17 9 2	July 14	17 9 2
1964			148 8 3	4322 12 8	Sept 30	17 16 9	Oct 14	17 16 9
1965			93 6 6	4228 16 2	Dec 31	17 16 9	Jan 1	17 16 9
1966				4071 14 5	Mar 31	17 16 9	Apr 14	17 16 9
1967				3904 17 8	June 30	17 16 9	July 14	17 16 9
1968				3737 21 1	Sept 30	17 16 9	Oct 14	17 16 9
1969				3570 24 4	Dec 31	17 16 9	Jan 1	17 16 9
1970				3403 27 7	Mar 31	17 16 9	Apr 14	17 16 9
1971				3236 31 0	June 30	17 16 9	July 14	17 16 9
1972				3069 34 3	Sept 30	17 16 9	Oct 14	17 16 9
1973				2902 37 6	Dec 31	17 16 9	Jan 1	17 16 9
1974				2735 40 9	Mar 31	17 16 9	Apr 14	17 16 9
1975				2568 44 2	June 30	17 16 9	July 14	17 16 9
1976				2401 47 5	Sept 30	17 16 9	Oct 14	17 16 9
1977				2234 50 8	Dec 31	17 16 9	Jan 1	17 16 9
1978				2067 54 1	Mar 31	17 16 9	Apr 14	17 16 9
1979				1900 57 4	June 30	17 16 9	July 14	17 16 9
1980				1733 60 7	Sept 30	17 16 9	Oct 14	17 16 9
1981				1566 64 0	Dec 31	17 16 9	Jan 1	17 16 9
1982				1400 67 3	Mar 31	17 16 9	Apr 14	17 16 9
1983				1233 70 6	June 30	17 16 9	July 14	17 16 9
1984				1066 73 9	Sept 30	17 16 9	Oct 14	17 16 9
1985				900 77 2	Dec 31	17 16 9	Jan 1	17 16 9
1986				733 80 5	Mar 31	17 16 9	Apr 14	17 16 9
1987				566 83 8	June 30	17 16 9	July 14	17 16 9
1988				400 87 1	Sept 30	17 16 9	Oct 14	17 16 9
1989				233 90 4	Dec 31	17 16 9	Jan 1	17 16 9
1990				66 93 7	Mar 31	17 16 9	Apr 14	17 16 9
1991				00 97 0	June 30	17 16 9	July 14	17 16 9
1992				00 100 3	Sept 30	17 16 9	Oct 14	17 16 9
1993				00 103 6	Dec 31	17 16 9	Jan 1	17 16 9
1994				00 106 9	Mar 31	17 16 9	Apr 14	17 16 9
1995				00 110 2	June 30	17 16 9	July 14	17 16 9
1996				00 113 5	Sept 30	17 16 9	Oct 14	17 16 9
1997				00 116 8	Dec 31	17 16 9	Jan 1	17 16 9
1998				00 120 1	Mar 31	17 16 9	Apr 14	17 16 9
1999				00 123 4	June 30	17 16 9	July 14	17 16 9
2000				00 126 7	Sept 30	17 16 9	Oct 14	17 16 9
2001				00 130 0	Dec 31	17 16 9	Jan 1	17 16 9
2002				00 133 3	Mar 31	17 16 9	Apr 14	17 16 9
2003				00 136 6	June 30	17 16 9	July 14	17 16 9
2004				00 140 0	Sept 30	17 16 9	Oct 14	17 16 9
2005				00 143 3	Dec 31	17 16 9	Jan 1	17 16 9
2006				00 146 6	Mar 31	17 16 9	Apr 14	17 16 9
2007				00 150 0	June 30	17 16 9	July 14	17 16 9
2008				00 153 3	Sept 30	17 16 9	Oct 14	17 16 9
2009				00 156 6	Dec 31	17 16 9	Jan 1	17 16 9
2010				00 160 0	Mar 31	17 16 9	Apr 14	17 16 9
2011				00 163 3	June 30	17 16 9	July 14	17 16 9
2012				00 166 6	Sept 30	17 16 9	Oct 14	17 16 9
2013				00 170 0	Dec 31	17 16 9	Jan 1	17 16 9
2014				00 173 3	Mar 31	17 16 9	Apr 14	17 16 9
2015				00 176 6	June 30	17 16 9	July 14	17 16 9
2016				00 180 0	Sept 30	17 16 9	Oct 14	17 16 9
2017				00 183 3	Dec 31	17 16 9	Jan 1	17 16 9
2018				00 186 6	Mar 31	17 16 9	Apr 14	17 16 9
2019				00 190 0	June 30	17 16 9	July 14	17 16 9
2020				00 193 3	Sept 30	17 16 9	Oct 14	17 16 9
2021				00 196 6	Dec 31	17 16 9	Jan 1	17 16 9
2022				00 200 0	Mar 31	17 16 9	Apr 14	17 16 9
2023				00 203 3	June 30	17 16 9	July 14	17 16 9
2024				00 206 6	Sept 30	17 16 9	Oct 14	17 16 9
2025				00 210 0	Dec 31	17 16 9	Jan 1	17 16 9
2026				00 213 3	Mar 31	17 16 9	Apr 14	17 16 9
2027				00 216 6	June 30	17 16 9	July 14	17 16 9
2028				00 220 0	Sept 30	17 16 9	Oct 14	17 16 9
2029				00 223 3	Dec 31	17 16 9	Jan 1	17 16 9
2030				00 226 6	Mar 31	17 16 9	Apr 14	17 16 9
2031				00 230 0	June 30	17 16 9	July 14	17 16 9
2032				00 233 3	Sept 30	17 16 9	Oct 14	17 16 9
2033				00 236 6	Dec 31	17 16 9	Jan 1	17 16 9
2034				00 240 0	Mar 31	17 16 9	Apr 14	17 16 9
2035				00 243 3	June 30	17 16 9	July 14	17 16 9
2036				00 246 6	Sept 30	17 16 9	Oct 14	17 16 9
2037				00 250 0	Dec 31	17 16 9	Jan 1	17 16 9
2038				00 253 3	Mar 31	17 16 9	Apr 14	17 16 9
2039				00 256 6	June 30	17 16 9	July 14	17 16 9
2040				00 260 0	Sept 30	17 16 9	Oct 14	17 16 9
2041				00 263 3	Dec 31	17 16 9	Jan 1	17 16 9
2042				00 266 6	Mar 31	17 16 9	Apr 14	17 16 9
2043				00 270 0	June 30	17 16 9	July 14	17 16 9
2044				00 273 3	Sept 30	17 16 9	Oct 14	17 16 9
2045				00 276 6	Dec 31	17 16 9	Jan 1	17 16 9
2046				00 280 0	Mar 31	17 16 9	Apr 14	17 16 9
2047				00 283 3	June 30	17 16 9	July 14	17 16 9
2048				00 286 6	Sept 30	17 16 9	Oct 14	17 16 9
2049				00 290 0	Dec 31	17 16 9	Jan 1	17 16 9
2050				00 293 3	Mar 31	17 16 9	Apr 14	17 16 9
2051				00 296 6	June 30	17 16 9	July 14	17 16 9
2052				00 300 0	Sept 30	17 16 9	Oct 14	17 16 9
2053				00 303 3	Dec 31	17 16 9	Jan 1	17 16 9
2054				00 306 6	Mar 31	17 16 9	Apr 14	17 16 9
2055				00 310 0	June 30	17 16 9	July 14	17 16 9
2056				00 313 3	Sept 30	17 16 9	Oct 14	17 16 9
2057				00 316 6	Dec 31	17 16 9	Jan 1	17 16 9
2058				00 320 0	Mar 31	17 16 9	Apr 14	17 16 9
2059				00 323 3	June 30	17 16 9	July 14	17 16 9
2060				00 326 6	Sept 30	17 16 9	Oct 14	17 16 9
2061				00 330 0	Dec 31	17 16 9	Jan 1	17 16 9
2062				00 333 3	Mar 31	17 16 9	Apr 14	17 16 9
2063				00 336 6	June 30	17 16 9	July 14	17 16 9
2064				00 340 0	Sept 30	17 16 9	Oct 14	17 16 9
2065				00 343 3	Dec 31	17 16 9	Jan 1	17 16 9
2066				00 346 6	Mar 31	17 16 9	Apr 14	17 16 9
2067				00 350 0	June 30	17 16 9	July 14	17 16 9
2068				00 353 3	Sept 30	17 16 9	Oct 14	17 16 9
2069				00 356 6	Dec 31	17 16 9	Jan 1	17 16 9
2070				00 360 0	Mar 31	17 16 9	Apr 14	17 16 9
2071				00 363 3	June 30	17 16 9	July 14	17 16 9
2072				00 366 6	Sept 30	17 16 9	Oct 14	17 16 9
2073				00 370 0	Dec 31	17 16 9	Jan 1	17 16 9
2074				00 373 3	Mar 31	17 16 9	Apr 14	17 16 9
2075				00 376 6	June 30	17 16 9	July 14	17 16 9
2076				00 380 0	Sept 30	17 16 9	Oct 14	17 16 9
2077				00 383 3	Dec 31	17 16 9	Jan 1	17 16 9
2078				00 386 6	Mar 31	17 16 9	Apr 14	17 16 9
2079				00 390 0	June 30	17 16 9	July 14	17 16 9
2080				00 393 3	Sept 30	17 16 9	Oct 14	17 16 9
2081				00 396 6	Dec 31	17 16 9	Jan 1	17 16 9
2082				00 400 0	Mar 31	17 16 9	Apr 14	17 16 9
2083				00 403 3	June 30	17 16 9	July 14	17 16 9
20								

Exhibit "B" Agreement

Exhibits

Exhibit "B"
Agreement
26th September
1969
(continued)

TERMS AND CONDITIONS:

1. OUT GOINGS

(a) INSURANCE: ~~Subject matter of sale (except chattels) at presently insured with for \$ against fire, hurricane, earthquake, storm, riot, burglary and premium paid for period ending day of 196~~

Policy to be assigned to purchase and premium to be apportioned as from date of ~~1st January 1969~~ *1st Jan 1970*
~~OR~~ Purchase to arrange insurance as from the date hereof. Vendor will advise Insurer forthwith of sale and subject to insurer's sanction will hold insurance for both parties in their respective interest.

(b) LAND RENT: ~~Paid for period ending day of 19 Purchaser to pay from the date of~~

(c) TOWN RATES: Paid for period ending 31st day of ~~January 1969~~ Purchaser to pay from the date of *1st Jan, 1970*

(d) OTHER OUTGOINGS: Such as water rates, electricity, telephone etc. *Vendor will pay up to 31st January, 1969*

2. POSSESSION

- (a) Possession to be given by the Vendor and taken by the Purchaser as from the *day of 1st January 1970*
- (b) Vacant possession to be given by the Vendor and taken by the Purchaser as from the *31st day of December 1969*
- (c) Details for tenants in occupation,

(1) <u>NAME</u>	<u>NATURE OF TENANCY</u>	<u>RENT</u>	<u>DATE PAID TO</u>
(2) <i>Wing chee wai - lease</i>			
(3) <i>Wing chee wai - weekly tenancy</i>			} <i>£30 per week</i>
(4)			

- (d) Purchaser to receive rents from the date of *15th day of October 1969*
- (e) Both parties to notify tenants of sale.

3. THE VENDOR declares as follows:

- (a) That ~~th~~/he has/have power to sell
- (b) That no survey of the land hereby sold is necessary as the land has been properly surveyed and no consent of the sub-division of land Board or the Local authority is necessary.

Exhibits
 Exhibit "B"
 Agreement
 26th September
 1969
 (continued)

Exhibit "B" Agreement

- 3 -

- (a) The Land hereby sold is not affected by a Town Planning Scheme.
- (b) There is not order of the Local Authority for closing or repair of buildings.
4. (a) The Purchasers acknowledges that ~~they~~/he/she or his/~~her~~ agent have personally inspected the subject-matter of sale and that he she relies entirely on his/~~her~~ judgment and that no error or misdescription of the area of the land hereby sold shall annul this agreement or entitle him/~~her~~ to any damage or compensation
- (b) The Purchaser declares that he/~~she~~/~~they~~ is under no disability to hold land.
5. CONSENT
- (a) The consent of the following person or persons are to be obtained;
- (i) ~~Lessor (Director of Lands) Native Land Trust Board~~
- (ii) Mortgage *over in first mortgage*
- nd* (b) ~~Both parties will sign the necessary application forms for necessary consents~~
6. COSTS AND DISBURSEMENTS to be paid by Vendor/Purchaser
7. SPECIAL CONVENANTS AND CONDITIONS *Vendor must occupy one plot now occupied by him from up to 31st January, 1967*
- nd* 8. TIME shall be of the essence of this contract.
9. If default is made by the Purchaser in payment when due of any of the purchase moneys or interest or in performance or observance of any of the terms and conditions of the sale the Vendor (in addition to other remedies) may rescind this sale contract (whereupon the deposit therefore paid shall be forfeited to the Vendor

Exhibit "B" Agreement

Exhibits
Exhibit "B"
Agreement
26th September
1969
(continued)

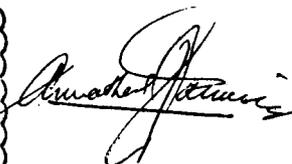
- 4 -

as (liquidated damages) and may at Vendor's option and without tendering any assurance resell the said land by public auction or private contract subject to such condition as the Vendor may think fit; and any deficiency in price resulting from and all expenses attending a resell or attempted resale after set-off or any payments made in reduction of the purchase price may be recovered from the purchaser by the Vendor as liquidated damages; and any increase in price upon resale after deduction of expenses shall belong to the Vendor.

10. The Vendor and the purchaser mutually agree subject to all necessary consents (if any) to enter into the within transaction and to complete all documents necessary for carrying the same into effect such documents to contain the within-written terms and conditions and such other provisions as are usually inserted in documents of a similar nature pursuant to proper and usual conveyancing practice of Solicitors in Fiji, Settlement is to take place not later than the day of ~~1969~~ 1969 or upon such extension of time as shall be mutually agreed upon.

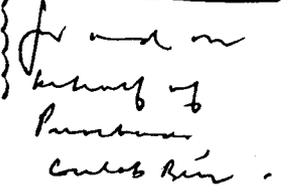
DATED this 6th day of September 1969.

SIGNED by the said Vendors after the contents hereof were read over and explained to him/her/they in the English/Hindustani language when he/she/they appeared fully to understand the meaning and effect thereof before signing in the presence:




Solicitor, Suva.

SIGNED by the said Purchaser after the contents hereof were read over and explained Hindustani language when he/she/they appeared fully to understand the meaning and effect thereof before signing in the presence of:



Solicitor, Suva.


Solicitor, Suva.

ExhibitsExhibit "C" - Receipt

Exhibit "C"

No. 1726

26.9.69

Receipt

26th
September
1969

Received from Gulab Ben by cash Cheque
 the sum of Five Hundred Dollars on
 account of Amratlal Jamnadas Re:
 Deposit Sale of C.T. 9077 - Spring Street
 Bank A.N.Z.
 Cheque No. 488964

₹500.00

Parshotam & Co.
 Per: (Sgd.)
 M. Rattan

10

Exhibits
Exhibit "D"
Certificate of
Title
23rd March
1956



No. 9977

FIJI

CERTIFICATE OF TITLE

AMRATIAL JANNADAS (Father's Name Jannadas)

of Suva - Merchant

AMRATIAL JANNADAS No. 61057 IS now proprietor
subject to the provisions and reservations contained in Crown Grant
No. 2177 and subject to such leases mortgages and encumbrances as are
certified by this and underwritten or endorsed hereon of

that piece of land known as Allotment 1 Section D, Toorek (Part of) and containing
Twenty-two and one half acres perches
be the same a title more or less and situate in the city

in the Island of Viti Levu and being
Lot 1 on deposited plan No. 2177 and shown in diagram con.

In Witness whereof I have hereunto signed my name and affixed my seal,

Suva 23rd March, 1956.

R. S. ...
Registrar of Titles

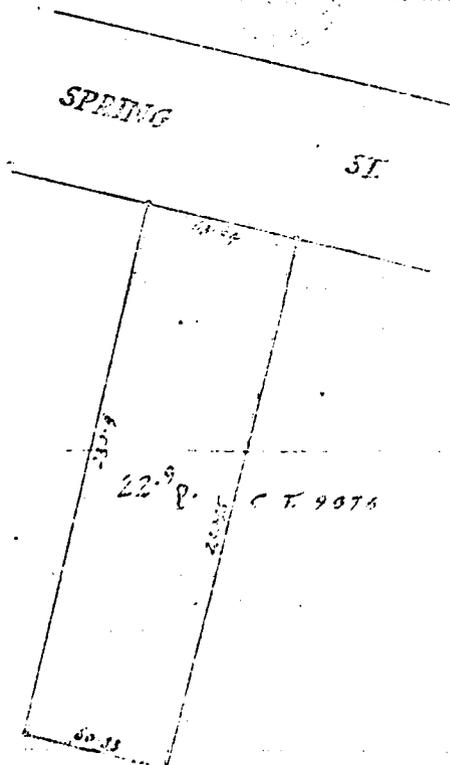


Exhibit "D" Certificate of Title

Exhibits
Exhibit "D"
Certificate of
Title
23rd March
1956
(continued)

No. 122182 Registered 21 Jan 1955 at 11:20 a.m.
To FIRST NATIONAL CITY BANK

[Signature]
Registrar of Titles.

MORTGAGE

No. 122182 Registered 21 Jan 1955 at 11:20 a.m.
To FIRST NATIONAL CITY BANK

[Signature]
DEPUTY Registrar of Titles.

No. 129611 Registered 22 Jan 1955 at 10:45 a.m.
To Being a full discharge as to 0.03 parcel being lot 34 on D.P. 2937

[Signature]
Registrar of Titles.

DISCHARGE OF MORTGAGE
No. 122182

No. 129611 Registered 22 Jan 1955 at 10:45 a.m.
To Being a full discharge as to 0.03 parcel being lot 34 on D.P. 2937

[Signature]
Registrar of Titles.

No. 96946 Registered 1 Nov 1966 at Noon
To AUSTRIA AND NEW ZEALAND BANK LIMITED

[Signature]
Registrar of Titles.

DEDICATION OF ROAD

No. 129612 Registered 27 Jan 1955 at 10:45 a.m.
To as to 0.03 parcel being lot 34 on D.P. 2987

Registered _____ at _____ m.
To _____

Registrar of Titles.

No. 107128 Registered _____ at _____ m.
To HENRY MAURICE SCOTT as Executor and Trustee

[Signature]
Registrar of Titles.

No. _____ Registered _____ at _____ m.
To _____

Registrar of Titles.

No. 110758 Registered 26 Sept 1969 at 3:22 p.m.
By GULAB BEN (J. KOTANJI)

[Signature]
Registrar of Titles.

No. _____ Registered _____ at _____ m.
To _____

Registrar of Titles.

Exhibit "E" Caveat

Exhibits
Exhibit "E"
Caveat
26th September
1967

Registrar of Titles Office,
Suva, FIDJI ISLANDS, 19. 9. 67

No. 110052

Sir,

I have the honour to notify you, in terms of Section 129 of the "Land (Transfer and Registration) Ordinance, Cap. 136," that a Caveat has been lodged by **GEORGE DAN (S/A Ratanji)** forbidding Registration of any dealing with reference to the land comprised in **DEED OF TRANSFER NO. 9377**

until this Caveat be withdrawn by the Caveator or by the order of the Supreme Court, or unless such dealing be subject to the claim of the Caveator, or until after the lapse of twenty-one days from the date of the service of notice by you at the following address:—

of/- **Murphy & Company,**
Solicitors,
Box 131,
Suva.

Yours faithfully,

W. J. ...
Registrar of Titles

To: **MURPHY & COMPANY (S/A Ratanji),**

Exhibits
Exhibit "E"
Caveat
25th September
1967
(continued)

FIJI

No. 110256

CAVEAT

Forbidding Registration of Dealing with Land

NOTE: IN ALL STATES BEFORE SIGNING, NO ALTERATION SHOULD BE MADE BY SIGNING. THE SIGNATURE SHOULD BE SIGNED THROUGH WITH A PEN AND SHOULD REMAIN UNCOVERED OVER THEM. THE ALTERATION IS NOT VALID BY THE SIGNATURE. IN THE MARGIN OR OTHERWISE IN THE ATTESTATION. ALL NAMES MUST BE PRINTED OR PRINTED. ** - 11.75

TO THE REGISTRAR OF TITLES.

TAKE NOTICE that I, GEORGE BUN (Father's name ANTHONY) of Suva in the Colony of Fiji, Leveidly -----
claiming an estate or interest as Purchaser -----
by virtue of a sale and purchase agreement dated the 26th day of -----
February 1967 -----

in the land described as follows:-

Section Number	Description	Province or Island	District or Town	Area	Part or Whole
11.17	Part of Section 11, Town of Suva, Lot 1 Subdiv.	Viti Levu	Suva	1/2	Whole

forbid the registration of any dealing with the above-mentioned land, which is withdrawn by the Caveator or on the other side of the Caveat, and is subject to the claim of the Caveator, and the Caveator is not bound by the service of notice by the Registrar of the title of the land.

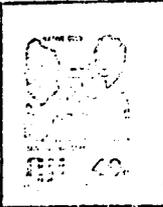
(a) State distinctly an interest which would be a burden if it were not so stated.

Name and address of Caveator: G/- Jeremiah and Company, 2, Market Street, Suva

Dated this 26th day of September 1967

I, the abovesaid GEORGE BUN (Father's name ANTHONY)
make oath and say that the above is true and correct.

Sworn before me at Suva
26th day of September 1967
Robert
Assistant Registrar of Titles



CAVEAT No. 110256
The Registrar of Titles

MEMORANDUM OF MORTGAGES AND ENCUMBRANCES, Etc.
Subject to Mortgage Nos. 65056 and 107488

Exhibits
Exhibit "E"
Caveat
25th September
1967
(continued)

Col *277/69*
COLAR BEN H. JAYARAJAS
E
27. 9. 73.

Extract for the purposes of the Land (Transfer and Registration) Ordinance (Cap. 153)

[Signature]
Solicitor for the Caveator



CERTIFIED TRUE COPY

[Signature]
DEPUTY REGISTRAR OF MORTGAGES

27/9/73.

Exhibit "F" Mortgage

Exhibits
Exhibit "F"
Mortgage
16th December
1971
(continued)

SIXTHLY that the mortgagor will insure and keep insured in the name of the mortgagee all buildings fixtures improvements and fittings now at any time erected and built or to be built on the said land in the full insurable value thereof in some office to be approved of by the mortgagee and all policies and receipts for moneys paid and other usual evidences of insurance shall be given to the mortgagee immediately upon the issue thereof And that in the event of loss or damage by fire of any of the buildings fixtures and improvements or other fittings now or at any time hereafter upon the said land the mortgagee shall alone have full power to settle and satisfy any claim against any insurance company or companies under any policies now in existence or that may hereafter be issued and the sum or sums so received or obtained on account of such insurance shall be applicable either in or towards repairs or rebuilding or shall be credited to the mortgagor at the option of the mortgagee And in case the mortgagor shall at any time fail to effect or maintain such insurance as aforesaid it shall be lawful for but not obligatory upon the mortgagee to effect or keep up the same.

SEVENTHLY that all moneys costs and expenses legal and otherwise which shall be paid or incurred by the mortgagee in connection with the account of the mortgagor or this security in connection with or incidentally to the exercise of any power express or implied given to the mortgagee by these presents or otherwise in connection with the said premises together with interest for the same at the rate aforesaid from the time or respective times of the same having been paid or incurred shall be repaid to the mortgagee by the mortgagor on demand until repayment shall together with interest at the rate aforesaid be covered by this security.

EIGHTHLY that nothing herein contained shall be held to discharge abate or prejudice any security or securities now held or which may hereafter be held or taken by the mortgagee or the payment of any of the moneys intended to be hereby secured nor shall this instrument nor any such other security effect any claim or demand which the mortgagee now has or hereafter may have or be entitled to make against any other person or persons whatsoever as surety or sureties or on any bill or bills of exchange or promissory note or notes to the mortgagee for the moneys hereby secured or any part thereof or operate as a payment of such money until the same shall have been actually paid in cash.

NINTHLY that the right of the mortgagee to sue and recover on any promissory note or other negotiable instrument representing the moneys hereby secured or any part thereof shall not be deemed to have merged in this security.

TENTHLY that these presents shall be running and continuing security so long as the relation of banker and customer shall subsist between the mortgagee and the mortgagor irrespective of any sums which may be paid to the credit of the account of the mortgagor with the mortgagee and notwithstanding any settlement of account or any other matter or thing whatsoever such security shall remain in full force and extend to cover any sum of money which may hereafter be advanced from the mortgagor to the mortgagee until a final discharge of this security shall have been executed by the mortgagee and delivered to the mortgagor.

ELEVENTHLY that the mortgagee upon default in payment of any moneys secured or any part thereof or any interest may -

- (a) enter into possession of the mortgaged land by receiving the rents and profits thereof;
- (b) distrain upon the occupier or tenant of the said land for the rent then due;
- (c) bring an action of ejectment to recover the said land either before or after the receipt of the rents and profits thereof or making any distress as aforesaid either before or after any sale of such land effected under the power of sale herein implied in this Mortgage.

in the same manner in which the mortgagee might have made such entry or distress or brought such action if the principal sum were secured to the mortgagee by a conveyance of the legal estate in the mortgaged land.

TWELFTHLY that without prejudice to any other sufficient mode of demand or notice any demand or notice required to be given to the mortgagor hereunder shall be sufficient if in writing and signed by or on behalf of the mortgagee and delivered personally to the mortgagor or affixed to a door or window of any part of the mortgaged premises or sent through the Post Office by a registered letter addressed to the mortgagor at the address of the mortgagor appearing in this Mortgage.

THIRTEENTHLY that the period of one month mentioned in Section 61 of the Land Transfer Act 1971 in relation to the purposes of this security expressly reduced to and fixed at seven days.

FOURTEENTHLY that if the mortgaged premises be sold under this security and shall fail to pay the amount remaining unpaid to the mortgagee at the date of such sale including all costs and expenses incidental to such sale the mortgagor shall forthwith pay to the mortgagee the amount of such deficiency together with interest thereon as hereinbefore provided.

FIFTEENTHLY that the mortgagor will at all times during the continuance of this security keep in good repair and substantially repair and maintain all buildings and erections on the said land and also all fixtures and fittings in and on any such buildings in proper and substantial repair and condition and that the mortgagor will not remove any buildings or erections from off the said land or alter or add to them so as to reduce their value without the written consent of the mortgagee.

Exhibits
Exhibit "F"
Mortgage
16th December
1971
(continued)

Exhibit "F" Mortgage

WHEREFORE that the mortgagor will not in any manner further encumber the said land without the consent of the mortgagee first had and obtained such consent to be in the absolute discretion of the mortgagee.

AND for the better securing to the mortgagee the repayment in manner aforesaid of all principal interest and other moneys which it is hereinbefore recited should be included in and secured by this Mortgage the mortgagor hereby mortgage to the mortgagee the land above described.

IN WITNESS whereof we have hereto signed our names this 16th day of December



The signature: "A. JAMBADAS" was made in my presence and I verily believe that such signature is of the proper handwriting of the person described as Amratlal Jambadas (father's name Jambadas) of Suva in the Dominion of Fiji, Storekeeper the mortgagor and I certify that I read over and explained the contents hereof to the mortgagor in the Fijian language and the mortgagor appeared fully to understand the meaning and the effect thereof.

Amratlal
Solicitor Suva

Correct for the purposes of the Land Transfer Act 1971.

Amratlal
Solicitor for the Mortgage.

Exhibit "F" Mortgage

Exhibits

Exhibit "F"
Mortgage
16th December
1971
(continued)

DISCHARGE OF MORTGAGE

129611 22 AUG 1973 10.4.1973
 Being a full discharge
 of 0.03 per cent
 being lot 34 on DP 2987

[Signature]

LAWYER & LAWYER
 SOLICITORS,
 SYDNEY

MORTGAGE



CERTIFIED TRUE COPY

[Signature]
 DEPUTY REGISTRAR OF DEEDS

27/9/73.

Civil 217/69
 GULAB KEN A. JAMNADAS
 F
 27.9.73

Exhibits

Exhibit "G" - Power of Attorney

Exhibit "G"

Power of
Attorney4th September
1973

Know All Men By These Presents That I
GULAB BEN d/o Ratanji wife of Chimanlal Vallabh
Das of 113 Amy Street, Suva, Company Director

HEREBY NOMINATE CONSTITUTE AND APPOINT
CHIMANLAL VALLABH DAS f/n Vallabh Das of 113 Amy
Street, Suva, Company Director, to be my true and
lawful attorney for the purposes and with the
powers hereinafter expressed that is to say:-

(1) To sell for cash by way of exchange or on 10
such other terms as my attorney shall think proper
all or any land leases mortgages easements or
encumbrances which now belong or shall hereafter
belong to me as the registered proprietor thereof
under the Land (Transfer & Registration) Ordinance
or otherwise as the owner thereof; also to mortgage
all or any such lands leases mortgages easements or
encumbrances for any sum at any rate of interest
also to charge the same with any annuity of any
amount; also to lease all or any such lands as 20
shall be of freehold tenure and to sublease all or
any such lands as shall be of leasehold tenure for
any term of years not exceeding 21 years in
possession at any rent; also to surrender or obtain
or accept the surrender of any lease or sub-lease
in which I am or may be interested; also to purchase
and accept any land lease mortgage easement or
encumbrance also to exercise and execute all rights
and powers which now are or shall hereafter be 30
vested in or conferred on me as an owner in fee
simple lessor lessee mortgagee encumbrancer or
caveator under the said Ordinance or otherwise for
me and in my name to sign all such deeds instruments
and writings and to do all such acts matters and
things as may be necessary or expedient for carrying
out the powers hereby given and for recovering all
sums of money that are now or may become due or
owing to me in respect of the premises and for
enforcing for varying any contracts covenants or
conditions binding upon any mortgagor lessee tenant 40
or occupier of the said land or upon any other
person in respect of the same and for recovering
and maintaining possession of the said lands and
for protecting the same from waste damage or tres-
pass; also to repair renew reinstate and alter any
buildings erections or improvements on the said
lands and to comply with any ordinances and regula-
tions relating thereto and to employ architects

surveyors contracts and workmen for such purpose.

10 (2) To ask demand sue for recover and receive all sums of money stocks shares bond choses-in-action chattels goods effects and things now owing or payable or belonging to or receivable by me or which shall at any time or times hereafter be owing payable or belong to or be receivable by me by virtue of any security or upon any balance of accounts or gift or otherwise howsoever and on payment transfer or delivery thereof or of any part thereof to give sign and execute receipts releases or other discharges for the same and on non-transfer or non-delivery thereof or any part thereof to commence carry on and prosecute any action proceeding whatsoever for recovering or compelling the payment transfer or delivery thereof.

20 (3) To commence prosecute enforce answer or oppose all actions and other legal proceedings and demands touching any matters in which I am or may hereafter be interested or concerned and also if thought fit to compromise refer to arbitration abandon submit to judgment or become non-suited in any such action or proceedings as aforesaid.

POWER OF ATTORNEY No. 5675

Registered 6 SEP a 3.10 P.M.

LODGED BY:
RAMRAKHAS
SOLICITORS
SUVA-FIJI

(Sgd) ?

30 DEPUTY REGISTRAR OF TITLES

(4) To state pay settle adjust compound submit to arbitration or for the decision of any competent court tribunal board or officer and compromise all actions suits accounts reckoning claims demands and disputes whatsoever which now are or hereafter shall or may be depending between me and any person or persons corporation or corporations whomsoever in such manner in all respects as my attorney shall think fit.

40 (5) To sell exchange covert into money lease and hire out any stocks shares bonds choses-in-action chattels goods efforts or things which now belong or at any time or times hereafter shall belong to me and to purchase or otherwise acquire such stocks shares bonds choses-in-action chattels goods effect or things as my attorney may think advisable.

Exhibits

Exhibit "G"

Power of
Attorney

4th September
1973

(continued)

Exhibits

—
Exhibit "G"Power of
Attorney4th September
1973

(continued)

(6) To manage carry on and superintend any business or undertaking which I may carry on or in any way be interested in whether solely or in partnership with another or others.s

(7) To give and execute all such bonds guarantees indemnities and covenants in respect of any existing or future indebtedness or obligation of myself or any other person or any corporation as my attorney may think necessary expedient or proper.

(8) To hold or to deposit any money which may come into the hands of my attorney under these presents with any banker or other person or corporation and to pay therefrom all or any of my existing or future debts or liabilities and all costs charges expenses and losses lawfully incurred by my attorney under these presents and to invest such money or any part thereof in such stocks bonds shares or fund or securities as my attorney shall think proper and from time to time to vary any such investment. 10

(9) To exercise for me and in my name all rights and privileges and to perform all duties which now or hereafter may appertain to me as a holder of debentures or shares stock of or as otherwise interested in any company or corporation or as a holder of any stock or bond issued by any Government. 20

(10) To borrow from time to time such sum or sums of money as my attorney may think expedient upon the security of any of my property whether real personal or otherwise and for such purposes to give execute and make such mortgages charges pledges bonds or other securities and with such covenants powers and provisions as my attorney may deem advisable. 30

(11) To appear for me in any court of justice or before any competent tribunal board or officer in any action or other proceeding which may be instituted against me or whereto I shall be a party and to defend the same or suffer any judgment order or award to be had or given against me in any such action or other proceeding by default or otherwise as my attorney shall think proper. 40

(12) To enter into make sign seal execute deliver acknowledge and perform any contract agreement deed writing or thing that may in the opinion of my attorney be necessary or proper to be entered into

made signed sealed executed delivered acknowledged, or performed for effectuating the purposes in these presents contained or any of them.

Exhibits

—
Exhibit "G"

Power of
Attorney

4th September
1973

(continued)

10 (13) In my name and on my behalf to operate on any banking account or accounts and for that purpose to sign draw accept or endorse cheques promissory notes bills of exchange and other negotiable instruments and also to make fixed or temporary deposits in any bank in the name of my attorney or in my name and to withdraw the same at will.

(14) To delegate all or any of the powers hereby conferred upon my attorney and from time to time to appoint any substitute or substitutes to do execute and perform all or any such matters and things as are herein contained and the same substitutes at the discretion of my attorney to remove and to appoint another or others in his her or their place.

20 (15) To concur in doing any of the acts and things herein mentioned in conjunction with any other person or persons interested in the premises.

30 (16) So far as I can lawfully give or delegate such powers discretions and authorities respectively to sell transfer lease mortgage dispose of deal with and manage any property real or personal which may be or become vested in or administered or controlled by me alone or jointly with any other person or persons as a trustee assignee executor administrator director committee attorney agent substitute or delegate or in any fiduciary capacity whatsoever and to exercise any powers and discretions bring and defend actions and proceedings control and administer any estate or funds execute and sign any deeds and instruments and generally to do any acts whether in my own name or in the name of any other person or persons which I could lawfully exercise sign do and cause to be done in any and every such capacity whether solely or jointly with any other person or persons.

40 (17) Generally to do execute and perform any other act deed matter or thing whatsoever which ought to be done executed or performed or which in the opinion of my attorney ought to be done executed or performed in or about my property concerns engagement and business of every nature and kind whatsoever as fully and effectually to all intents and purposes as I myself could do if I were present

Exhibits

Exhibit "G"

Power of
Attorney4th September
1973

(continued)

and did the same in my proper person it being my intent and desire that all matters instruments and things respecting the same shall be under the full management and direction of my attorney.

(18) To acknowledge in my name and as my act and deed this Power of Attorney and to register and record the same in the proper office in the Dominion of Fiji or elsewhere and to procure to be done any and every other act and thing whatsoever which may be in any wise requisite or proper for authenticating and giving full effect to this Power of Attorney.

10

AND I HEREBY EXPRESSLY DECLARE that the foregoing powers are to be construed not strictly but in the widest sense.

AND I HEREBY FURTHER DECLARE that this Power of Attorney shall remain in full force and effect until due notice of my death or other revocation shall be actually received by my attorney and that no person or persons or corporation or corporations dealing with my attorney shall be concerned to see or enquire as to the propriety or expediency of any act deed matter or thing which my attorney may do execute or perform or purport to do execute or perform or agree to do execute or perform in my name by virtue of these presents.

20

AND LASTLY I HEREBY AGREE TO RATIFY AND CONFIRM whatsoever my attorney or the substitute or substitutes or agent or agents of my attorney shall lawfully do or cause to be done in or about the premises by virtue of these presents and to indemnify them and each of them against all costs charges expenses and losses incurred by them in the lawful execution of the powers hereby conferred.

30

IN WITNESS WHEREOF I have hereunto set my hand and seal this 4th day of September One thousand nine hundred and Seventy Three.

(Sgd) Gulab Ben

This signature "Gulab Ben" was made and this Power was sealed and delivered in my presence and I verily believe that such signature is of the proper hand writing/left thumb mark of the person described as GULAB BEN d/o Ratanji wife of Chimanlal Vallabh Das of 113 Amy Street, Suva,

40

and I certify that the contents hereof were read over and explained to her in the Hindustani language and she appeared to understand the meaning and effect thereof.

(Sgd.) K.C. Ramrakha
Solicitor, Suva.

CORRECT for the purposes of The Land Transfer Act 1971

Exhibits
—
Exhibit "G"
Power of Attorney
4th September 1973
(continued)

10

(Sgd.) K.C. Ramrakha
Solicitor for the Attorney.

Exhibit "H1" - Account

Mr. Amratlal Jamnadas,
Suva.

Suva, Fiji
Oct., 1969

Exhibit "H1"
Account
October 1969

IN TRUST ACCOUNT WITH PARSHOTAM & CO.
BARRISTERS & SOLICITORS

1969
Sept 26 By Gulab Ben
(Cheque No.488964

₹500.00

20

Exhibit "H2" - Account

Oct., 1969

Exhibit "H2"
Account
October 1969

Sic Oct. 8 To Amratlal
Jamnadas ₹200:
(Chq. No.550)

Oct.7 By Self
Deposit ₹11500.00

Dec. 3 To Chimanlal
V. Dass ₹9500.00
(Chq.No.977)

₹11500.00

₹11500.00

Exhibit "J" Transfer

MEMORANDUM OF PRIOR LEASES, MORTGAGES AND ENCUMBRANCES REFERRED TO

Exhibits
Exhibit "J"
Transfer
- October
1969
(continued)

Civil 297/69
GULAB BEN A. JAMNADAS
J
27.9.73

It may be made before any of the persons mentioned in section 17(1) of the Act. Not required if the instrument itself is signed before one of these persons.

DECLARATION BY ATTESTING WITNESS

Subscribed before me at _____ the _____ day of _____
_____ thousand nine hundred and _____

_____ the attesting witness to this instrument and declared that he personally knew _____

_____ the person signing the same by affixing his left thumb mark thereto and whose signature
persons their marks signatures

_____ by such mark the said _____
marks

_____ attested, and that the mark purporting to be the signature of the said
marks Signatures

_____ is his own left thumb mark and that
are their marks

_____ he is the person therein described as _____

_____ and that before affixing the said thumb mark the purport of the said instrument was interpreted in
marks them they appeared to understand the same.

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

Solicitor-for the Government

Exhibits

Exhibit "K1"

Letter,
Parshotam &
Co. to
Cromptons
10th October
1969

Exhibit "K1" - Letter, Parshotam
& Co. to Cromptons

PARSHOTAM & CO.
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

TELEPHONES: 23844-
23845
G.P.O. BOX 131

10th Oct., 1969

IN REPLY PLEASE QUOTE
F/11812

ATTENTION MR. A. LATEEF

Messrs. Cromptons,
Solicitors,
Suva.

10

Dear Sir,

Re: Gulab Ben and A. Jannadas

Further to the writer's several telephonic
conversations with your Mr. A. Lateef, we now
enclose herewith a copy of the sale and purchase
agreement executed on the 26th day of September,
1969.

We also enclose herewith a form of transfer
duly engrossed for execution by your client, if
approved.

20

We confirm that you are now acting for the
vendor Mr. A. Jannadas and that we are acting for
Mrs. Gulab Ben as purchaser in all matters connec-
ted with the purchase of the above property.

We confirm that the existing 1st Mortgage
will be discharged and a fresh mortgage for \$6000
will be executed by our client in favour of your
client. A payment of \$2000 will be made by our
client in reduction of the said mortgage.

30

We confirm that we shall be in a position to
settle as soon as we receive advice from you.

Yours faithfully,
PARSHOTAM & CO.

Per: (Sgd.) K. Parshotam

Encl:
KP/skt

Exhibit "K2" - Letter, Parshotam & Co.
to Wm. Scott & Co.

Exhibits
Exhibit "K2"
Letter,
Parshotam &
Co. to Wm.
Scott & Co.
10th October
1969

C O P Y

PARSHOTAM & CO.

10th October 1969

11815

Messrs. Wm. Scott & Co.,
Solicitors,
Suva.

10 Dear Sirs,

Re: Mortgage No. 10788 over C.T. 9077 -
Amratlal Jamnadas to Henry Maurice
Scott as executor and trustee

Our above-named client Mr. Amratlal Jamnadas
has instructed us to advise you that he is now in a
position to settle the whole of the above mortgage
debt.

20 We shall be pleased if you would kindly advise
us as to what the final balance is payable to your
Company.

An early reply will be highly appreciated.

Yours faithfully,
PARSHOTAM & CO.

Per:

KP/ckp

Exhibit "K3" - Letter, Wm. Scott & Co.
to Parshotam & Co.

Exhibit "K3"
Letter,
Wm. Scott &
Co. to
Parshotam &
Co.
14th October
1969

30 Wm. SCOTT & CO.
BARRISTERS & SOLICITORS
NOTARIES PUBLIC

G.P.O. BOX 360
ELDON CHAMBERS,
SUVA, FIJI

14th October, 1969

Messrs. Parshotam & Co.,
Solicitors,
SUVA.

Exhibits

Exhibit "K3"
Letter,
Wm. Scott & Co.
to Parshotam
& Co.

14th October
1969

(continued)

Dear Sirs,

Re: Mortgage No. 107488 - Amratlal Jamnadas
to Ext. J.F. Grant - Your Reference
F/11815

We acknowledge receipt of your letter of the
10th instant, and now enclose Statement of Account
showing the balance due as at the 14th instant.
Interest accrues at the rate of \$1.10 per day from
the 15/10/69 to date of settlement.

Our costs of Discharge amounts to \$8.40.

10

Would you let us know when you are ready to
effect settlement.

Yours faithfully,
Wm. SCOTT & CO.
Per: (sgd.) ?

Encl.
MPS/smv

Exhibit "K3"

Enclosure,
Wm. Scott &
Co. to
Parshotam &
Co.
Statement
of Account

14th October
1969

Exhibit "K3" - Enclosure, Wm. Scott
& Co. to Parshotam & Co.

Mr. Amratlal Jamnadas,
c/- Messrs. Parshotam & Co.,
Solicitors,
SUVA.

20

14th October, 1969

To Wm. Scott & Co.,
Solicitors, Suva.

IN ACCOUNT WITH ESTATE J.F. GRANT

1969

Jan. 31	To Principal	\$7,000.00	
Aug. 1	To interest on \$7,000.00 from 31/1/69 to 31/7/69 at 6½% - 6 months 1 day	228.75	30
	By Instalment	\$1,000.00	
	To interest 1/8/69 to 14/10/69 on \$6,228.75 - 75 days	83.20	
	By Balance	<u>6,311.95</u>	
		<u>\$7,311.95</u>	<u>7,311.95</u>

To Balance due and owing
as at 14/10/69

\$6,311.95

N.B. Interest accrues at the rate of \$1.10 as from
the 15/10/69 to date of settlement.

40

WITH COMPLIMENTS,
Wm. SCOTT & CO.
Per: (Sgd) ?

Exhibit "K4" - Letter, Parshotam & Co.
to Cromptons

PARSHOTAM & CO.
BARRISTERS & SOLICITORS,
COMMISSIONERS FOR OATHS

G.P.O. BOX 131
SUVA, FIJI

15th Oct. 1969

IN REPLY PLEASE QUOTE #/11815

ATTENTION MR. A. LATEEF

Exhibits

Exhibit "K4"

Letter,
Parshotam &
Co. to
Cromptons

15th October
1969

10

Messrs. Cromptons,
Solicitors,
SUVA.

Dear Sirs,

re: Gulab Ben & Amratlal Jamnadas -
Certificate of Title No. 9077

At the request of your client Mr. A. Jamnadas,
we enclose herewith a copy of the Caveat lodged
against the above Certificate of Title on the 26th
day of September, 1969.

20

Yours faithfully,
PARSHOTAM & CO.
Per: (Sgd.) K. Parshotam

Encl.
KP/ckp

• Exhibit "K5" - Letter, Ramrakas to
A. Jamnadas

Exhibit "K5"

Letter,
Ramrakas to
A. Jamnadas

23rd October
1969

30

RAMRAKHAS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

TELEPHONES:
24198

23rd October, 1969

Mr. Amratlal Jamnadas s/o Jamnadas,
C/- A. Jamnadas & Co.,
Epworth House,
SUVA.

Dear Sir,

Re: GULAB BEN d/o Ratanji

We act for the abovenamed with whom you
entered into an agreement dated the 26th September,
1969 wherein it was agreed that you would sell and

Exhibits

Exhibit "K5"

Letter,
Ramrakhas to
A. Jannadas

23rd October
1969

(continued)

that she would purchase from you all that land and buildings comprised in C.T.9077 and situated at Spring Street, Suva together with all improvements thereon for the price of \$18,000 (Eighteen Thousand Dollars). The sale was subject to Mortgage No.63056 and to other terms and conditions therein contained.

We understand that in pursuance of a conference held between Mr. Lateef of Messrs. Cromptons, Solicitors for the Mortgagee and Mr. K. Parshotam of Messrs. Parshotam & Co., a copy of the said agreement together with a form of transfer for execution by you has been forwarded to Messrs. Cromptons, who we understand are now acting for you. 10

Mr. A. Lateef of Messrs. Cromptons of Suva, Solicitors, as Solicitor for the Mortgagee named in Mortgage No.63056, has already consented on behalf of the said Mortgagee to the sale taking place between you and our client. We are also informed that you did on the 8th day of October, 1969, take from the stake-holders, Messrs. Parshotam & Co. of Suva, Solicitors, the sum of \$2,000 (Two Thousand Dollars) as part payment of the purchase price. 20

However, in spite of the above and in spite of all the documents necessary for the transaction to be completed being ready for execution, you have failed to honour the undertakings given as contained in your clause 9 of the said agreement.

Before we go any further, we wish to point out that Mr. Kantilal Parshotam of Messrs. Parshotam & Co., with complete confidence in your good intentions, gave you the said sum of \$2,000 and it behoves you to uphold that confidence as you are a commercial man of some repute. 30

We have been instructed to give you, as we hereby do, 14 days from the date hereof within which to comply with clause 9 of the said agreement and also to give you notice that by this letter, time is made of the essence and failure on your part to comply will result in our client taking, inter alia, an action for specific performance of the said agreement dated the 26th day of September, 1969. 40

Yours faithfully,
R A M R A K H A S

Per:

cc. Messrs. Cromptons,
Solicitors,
SUVA.

Messrs. Parshotam & Co.,
Solicitors,
SUVA.

Exhibits

Exhibit "K5"

Letter,
Ramrakhas to
A. Jannadas

23rd October
1969

(continued)

Exhibit "K6" - Letter, A. Jannadas to
Ramrakhas

Exhibit "K6"

Letter,
A. Jannadas
to Ramrakhas

A. J A M N A D A S & C O.
MERCHANTS

10

Phone: 23935

G.P.O. BOX 431
Mark's Street,
Suva.

3rd Nov., 1969

Messrs. Ramrakhas,
Solicitors,
Suva.

Dear Sirs,

20

I acknowledge the receipt of your letter of
23 October, 1969 and wish to inform you that
agreement which you have mentioned in this letter
is Null & Void.

Any action you wish to take on behalf of your
client Miss Gulab Ben Retanji will be defended.

Yours faithfully,

(Sgd.) Amretlal Jannadas

cc. To Messrs. Parshotam & Co.,
Solicitors,
Suva.

Exhibits

Exhibit "K7"

Letter,
Ramrakhas to
Cromptons

Undated

Exhibit "K7" - Letter, Ramrakhas
to Cromptons

RAMRAKHAS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

TEL: 24198

Messrs. Cromptons,
Solicitors,
SUVA.

Dear Sirs,

10

Re: Supreme Court C/A No.297 of 1969
Gulab Ben v. Amratlal Jamnadas

Will you please file your Statement of
Defence within the next seven days otherwise we
shall proceed to judgment.

Yours faithfully,

RAMRAKHAS

Per: (Sgd.)
B.C. Ramrakha

Exhibit "K8"

Letter,
Ramrakhas to
Cromptons

31st January
1970

Exhibit "K8" - Letter, Ramrakhas
to Cromptons

RAMRAKHAS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

TELEPHONES: OFFICE: 24198

31st January, 1970

Messrs. Cromptons,
Solicitors,
SUVA.

Dear Sirs,

30

Re: Supreme Court C/A 297 of 1969
Gulab Ben v. Amratlal Jamnadas

We note that you have entered an appearance
for the defendant in the above action.

You will note that Mortgage No. 63056 affects the property in question and we are given to understand that you are the solicitors for the mortgagee in the said mortgage. Mr. Kantilal Parshotam of Suva, Barrister & Solicitor, who was initially solicitor for the vendor and purchaser informed us that your Mr. Lateef had unequivocally stated to him (Mr. Parshotam) that the mortgagee or mortgagees concerned would have no objections to the sale.

Exhibits
Exhibit "K8"
Letter,
Ramrakhas to
Cromptons
31st January
1970
(continued)

10 In view of the foregoing, we view your Mr. Lateef as a material witness in our case. A conflict may therefore arise.

We do not know whether you have considered this aspect of the matter before agreeing to act for the defendant. However you may consider yourselves justified in acting for the defendant and we look forward to having your views in the matter.

Yours faithfully,
RAMRAKHAS
Per: (Sgd) B.C.Ramrakha

20 cc. Messrs. Parshotam & Co.,
Solicitors,
SUVA.

Exhibit "K9" - Letter, Ramrakhas to
Cromptons

RAMRAKHAS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

Exhibit "K9"
Letter,
Ramrakhas to
Cromptons
26th March
1970

In reply please quote G/233 26th March, 1970

30 Messrs. Cromptons,
Barristers & Solicitors,
S U V A.

Dear Sirs,

Re: GULAB BEN v. AMRATLAL JAMNADAS -
Supreme Court Action No.297 of 1969

We refer to our conversation with your Mr. J.N. Falvey.

We confirm that our client (as the purchaser of

Exhibits

Exhibit "K9"

Letter,
Ramrakhas to
Cromptons26th March
1970

(continued)

the property) is quite prepared to pay off your mortgagee client in full. We understand from your Mr. J.N. Falvey that notice of demand has in fact been sent, and payment is overdue.

We further confirm that it was only after your Mr. Abdul Lateef stated that the mortgagee was quite satisfied with the sale to our client, that Messrs. Parshotam and Co. made an initial payment £2,000:00 to Mr. A. Jamnadas. You will appreciate that when solicitors are acting for both parties, they do act on assurances given by one side to the other.

10

For this reason, we suggest that you refrain from acting for Mr. A. Jamnadas at all.

Yours faithfully,
R A M R A K H A S

Per:

(Sgd.)

K.C. Ramrakha.

Exhibit "K10"

Letter,
Ramrakhas to
Cromptons28th August
1970

Exhibit "K10" - Letter, Ramrakhas
to Cromptons

20

RAMRAKHAS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

TELEPHONES: 24198

28th August, 1968*

*/sic/

ATTENTION MR. D.N. SAHAY

Messrs. Cromptons,
Barristers and Solicitors,
SUVA.

Dear Sirs,

30

re: GULAB BEN - V - AMRATLAL JAMNADAS
Supreme Court Action No.297 of 1969

*/sic/

No reply has been received by us to our letter to you dated the 26th March, 1970.* We would request you to reply urgently to us.

We again raise the issue of the property of your acting. You will note that a somewhat similar

situation arose in the recent case of Marjorie Suchit.

We again repeat that we can pay off the mortgage concerned and request your advices on this.

One of the key witnesses to this matter, Mr. Kanti Lal Parshotam wishes to leave for India for four months holiday in November, 1970 so we will have to expedite and seek a date of hearing.

10 Pleadings are now complete. Summons for directions will issue and the matter will be entered for trial.

There does not seem much hope of settling this matter, but we would have to deal with this with other legal advisers of the plaintiff.

Yours faithfully,
RAMRAKHAS
Per: (Sgd)
K.C. Ramrakha

20 cc. Messrs. Parshotam & Co.,
Barristers and Solicitors,
S U V A.

Exhibit "K11" - Letter, Ramrakhas to
Commissioner for Stamp Duties

28th August, 1968.

The Commissioner for Stamp Duties,
Suva.

Dear Sirs,

re: GULAB BEN v. AMRATLAL JAMNADAS -
Supreme Court Action No. 297 of 1969

30 On the 26th September, 1969 the parties entered into the within enclosed Memorandum of Agreement. Shortly after the agreement was signed, our client Gulab Ben was advised by Amratlal Jamnadas that he did not wish to complete.

We were consulted, and we have commenced proceedings for specific performance. The matter is defended and is pending, it being alleged that the sale is not complete.

Exhibits

Exhibit "K10"

Letter,
Ramrakhas to
Cromptons

28th August
1970

(continued)

Exhibit "K11"

Letter,
Ramrakhas to
Commissioner
for Stamp
Duties

28th August
1968 [sic]

Exhibits

Exhibit "K11"

Letter,
Ramrakhas to
Commissioner
for Stamp
Duties

28th August
1968

(continued)

Messrs. Parshotam who acted for the purchasers requested the writer to deal with the issue of stamp duties from the very outset. My regret is that I have not done so and apologise for this. No intention existed of defrauding revenue or escaping stamp duty. The client was also willing to pay what was due.

If the document is legally valid, and binding, stamp duty would be payable. Otherwise, if it is incomplete and not binding, no duty would be payable.

10

We request that you accept this document for stamping on the understanding that if ultimately, the document is not binding, then the stamp duty paid would be refunded.

We would be pleased to have your comments on this matter.

Yours faithfully,
RAMRAKHAS

Per:
(Sgd.) K.C.Ramrakha.

20

Exhibit "K12"

Letter,
Commissioner
of Stamp
Duties to
Ramrakhas

24th November
1970

Exhibit "K12" - Letter, Commissioner
of Stamp Duties to Ramrakhas

CROWN LAW OFFICE

R.G.18/1

24th November, 1970.

Messrs. Ramrakhas,
Barristers & Solicitors,
G.P.O. Box 228
S U V A.

Dear Sirs,

30

re: GULAB BEN v. AMRATLAL JAMNADAS
Supreme Court Action No.297 of 1969

I have to hand your letter of the 18th instant with enclosure as advised.

2. Your explanations and apology are accepted as I realise that matters of this nature can sometimes slip one's mind.

3. You will obviously require to produce the

Memorandum in evidence and for that purpose it will require to be stamped and the fine paid. Duty is assessed at 50 cents and fine \$4.00.

4. In the event of the Court declaring the Memorandum to be null and void please apply to me and I shall forthwith attend to a refund of duty and fine.

5. The Memorandum has now been returned to the Stamp Duties Assessor/Cashier and can be uplifted upon payment of the amounts abovementioned.

10

Yours faithfully,

(Sgd.) A.D.S. Anderson
COMMISSIONER OF STAMP DUTIES.

ADSA/dwp

Exhibit "K13" - Letter, Cromptons to
Ramrakhas

C R O M P T O N S
BARRISTERS & SOLICITORS

16th February, 1971

20 Messrs. Ramrakhas,
Solicitors,
SUVA.

Dear Sirs,

re: Amratlal Jamnadas ats Gulab Ben
Supreme Court Civil Action No.297/69

We refer to several letters written by you to us raising the question of propriety of our firm acting for the defendant in the above action.

30 We do not agree with your contention, but after giving the matter much consideration, we have reluctantly decided to cease acting for the defendant, although we feel that it is quite in order for us to act for him. The position then is that in view of your persistent letters we have withdrawn from the case as Solicitors for the defendant, who has now instructed Messrs. Grahame & Co. Solicitors of Suva to act for him. We understand that Messrs. Grahame & Co. are attending to file and serve the

Exhibits

Exhibit "K12"

Letter,
Commissioner
of Stamp
Duties to
Ramrakhas

24th November
1970

(continued)

Exhibit "K13"

Letter,
Cromptons to
Ramrakhas

16th February
1971

Exhibits

Exhibit "K13"
 Letter,
 Cromptons to
 Ramrakhas
 16th February
 1971
 (continued)

necessary Notice of Change of Solicitors.

We think you will agree that in the circumstances the case should be adjourned to enable Messrs. Grahame & Co. to look into the matter.

Yours truly,
 Cromptons.

cc. The Chief Registrar,
 Supreme Court,
Suva.
 Messrs. Grahame & Co.,
 Solicitors,
Suva.

10

Exhibit "K14"
 Letter,
 Grahame & Co.
 to Ramrakhas
 20th June
 1973

Exhibit "K14" - Letter, Grahame & Co.
 to Ramrakhas

GRAHAME & CO.
 BARRISTERS & SOLICITORS

165 VICTORIA PARADE,
 SUVA.

CLJ/et

20th June, 1973

Messrs. Ramrakhas,
 Solicitors,
SUVA.

20

Dear Sirs,

re: Amratlal Jannadas ats. Gulab Ben
 Supreme Court Civil Action No.297 of 1969

The above action was commenced by you by the issue of a Writ of Summons on the 18th of December, 1969. A Statement of Claim was filed by you on the 12th of January, 1970 and delivered on the 30th of January, 1970 on Messrs. Cromptons, Solicitors, Suva who were then acting for the defendant. Defence was filed and delivered by Messrs. Cromptons on the 9th of February, 1970. We note that a Reply was filed and delivered by you on the 7th of April, 1970.

30

The action was set down for hearing in the Supreme Court at Suva on the 17th of February, 1971. Messrs. Cromptons reluctantly withdrew from the action on the 16th of February, 1971 as Solicitors for the defendant in view of your

repeated contention that it was not proper for them to act for the defendant. In this regard we refer you to letter dated 16th February, 1971 from Messrs. Cromptons addressed to you, copies of which letter were forwarded to the Chief Registrar, Supreme Court, Suva and to this firm.

Exhibits
 —
 Exhibit "K14"
 Letter,
 Grahame & Co.
 to Ramrakhas
 20th June
 1973
 (continued)

10 We were instructed to act for the defendant only a few days before the hearing of the action, and we filed a Notice of Change of Solicitors on the 16th of February 1971 and a copy of the Notice of Change of Solicitors was served on you as Solicitors for the plaintiff and on Messrs. Cromptons on the same date.

We appeared in Chambers, Supreme Court, Suva on the 17th of February, 1971 before Mr. Justice Nair when the plaintiff was represented by your Mr. K.C. Ramrakha. In order to enable us to go into the defence the action was taken off the list by consent of Counsel.

20 The position is that since the 17th of February, 1971 your firm has taken no steps whatever to set the action down for hearing. You have at no time discussed with us with a view to settlement of the action on a without prejudice basis.

You will appreciate that this state of affairs cannot be allowed to continue, and we are instructed to make application to have the action struck out.

Yours faithfully,
GRAHAME & CO.
 (Sgd.) ?

30

cc. The Chief Registrar,
 Supreme Court,
 Suva.

Exhibit "K15" - Letter, Ramrakhas to
 Grahame & Co.

RAMRAKHAS
 BARRISTERS & SOLICITORS
 COMMISSIONERS FOR OATHS

Exhibit "K15"
 Letter,
 Ramrakhas to
 Grahame & Co.
 22nd June
 1973

22nd June, 1973

Exhibits

Exhibit "K15"

Letter,
Ramrakhas to
Grahame & Co.22nd June
1973

(continued)

Messrs. Grahame & Co.,
Barristers & Solicitors,
SUVA.

Dear Sirs,

Re: AMRATLAL JAMNADAS ATS. GULAB BEN
SUPREME COURT CIVIL ACTION NO.297 of 1969

In reply to your letter dated 20th June, 1973 we are rather disturbed with the contents of your said letter. No doubt the above action was entered for trial under Order 34 Rule 3 on 25th September, 1970 and the matter was set down for hearing in the Supreme Court, Suva on the 17th of February, 1971. We rightly objected in law against Messrs. Cromptons acting for the Defendant and since your filing of Notice of Change of Solicitors on the 16th February, 1971 we ourselves have anticipated for a date of hearing be fixed by the Supreme Court. As you may be aware that owing to the shortage of Judges and at one stage due to the lack of Courts available we had difficulty in getting this action heard and disposed of.

10

20

Further your Mr. Jamnadas called in our office sometimes in the month of May this year to peruse certain documents pertaining to the said action and the writer could recall Mr. Jamnadas saying that he would not take any action until Mr. Ramrakha came back to Fiji. Mr. K.C. Ramrakha is due back to Fiji on the 7th July, 1973. Nevertheless, to date we are writing to the Chief Registrar to have the matter set down for hearing.

30

Yours faithfully,
R A M R A K H A S

Per: (Sgd) H.M. Patel

cc. The Chief Registrar,
Supreme Court,
SUVA.

Exhibit "K16" - Letter, Grahame & Co.
to Ramrakhas

Exhibits

Exhibit "K16"

GRAHAME & CO.
BARRISTERS & SOLICITORS

165 VICTORIA PARADE,
SUVA.

Letter,
Grahame & Co.
to Ramrakhas

CLJ/et

28th June, 1973

28th June
1973

Messrs. Ramrakhas,
Solicitors,
SUVA.

Dear Sirs,

10

re: Amretlal Jannadas vs. Gulab Ben
Supreme Court Civil Action No.297 of 1969

We refer to your letter of the 22nd inst.

20

We are unable to see how you can maintain that you had "difficulty in getting this action heard and disposed of" when your firm has in fact taken no steps since the 17th of February, 1971 to have the action set down for hearing. You state in your letter of the 22nd inst. that you are now writing to the Chief Registrar, Supreme Court, Suva to have the action set down for hearing, and it is abundantly clear that this should have been done by your firm soon after the 17th of February, 1971, when no doubt a date of hearing would have been assigned.

The writer did call to your office several weeks ago to peruse the alleged Agreement dated 26th September, 1969, and to obtain a photostat copy thereof, but your Mr. H.M.Patel was unable to oblige as your Mr. K.C. Ramrakha was overseas.

30

We do not appear to have received from you copy of any letter from you to the Chief Registrar, Supreme Court, Suva to have the case set down for hearing.

Yours faithfully,
GRAHAME & CO.

(sgd.) ?

cc. The Chief Registrar,
Supreme Court,
SUVA.

Exhibits

Exhibit "K17" - Letter, Grahame & Co.
to Ramrakhas

Exhibit "K17"

Letter,
Grahame & Co.
to Ramrakhas

27th August
1973

GRAHAME & CO.
BARRISTERS & SOLICITORS

CLJ/et

27th August, 1973

Messrs. Ramrakhas,
Solicitors,
SUVA.

Dear Sirs,

re: Amretlal Jammadas ats. Gulab Ben
Supreme Court Civil Action No.297 of 1969

10

We refer to our conversation of even date.

We confirm that we are immediately proceeding to make an application to amend the Defence filed and delivered in the action by inserting a further paragraph 4 to the Defence to read as follows:

- 4 Further and in the alternative the defendant will plead in law that there is no sufficient note or memorandum in writing of the alleged contract (which is not admitted) as required by Section 59 of the Indemnity, Guarantee and Bailment Ordinance (Cap.208) and Section 4 of the Statute of Frauds.

20

We also confirm that we are attending to prepare and file an Affidavit of Documents in the possession of the defendant and in our possession, and note that you are also attending to prepare and file an Affidavit of Documents in the possession of the plaintiff and in your possession.

We have requested to you that if you let us have the document dated 26th September, 1969 we could photostat two copies of the same. At the hearing of the action on the 27th of September, 1973 the original would no doubt be tendered by you in evidence, and the two photostat copies for Counsel appearing at the hearing.

30

Yours faithfully,
GRAHAME & CO.
(Sgd.) ?

cc. The Chief Registrar,
Supreme Court,
Suva.

40

Exhibit "K18" - Letter, Ramrakhas to
Grahame & Co.

RAMRAKHAS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

3rd September, 1973

Messrs. Grahame & Co.,
Barristers and Solicitors,
SUVA.

10 Dear Sirs,

Attention Mr. C.L. Jamnadas
Gulab Ben v. Amratlal Jamnadas

This action is fixed for hearing on the 27th day of September, 1973. We note that you have applied to amend pleadings. This will be resisted.

20 In this matter, the parties are related. However, all the negotiations would be conducted by our client's husband Chimanlal V. Dass and we understand that it was he alone who dealt with your client, who had no direct negotiations with Mrs. Gulab Ben. For this reason, we had not intended at any stage to call Gulab Ben to give evidence in this case.

At the moment, Gulab Ben's mother is critically ill in India, and she has made a request to see Gulab Ben. The latter will leave on Wednesday, the 5th September, 1973.

30 If you have any serious comments to make on her departure, we would be glad to know, at the very latest, by 4 p.m. today. Her husband will henceforth act as her attorney and agent.

We would also be filing an affidavit of documents shortly, and letting you have copies of the documents you sought immediately after exchange of affidavits.

Yours faithfully,
RAMRAKHAS
Per: (Sgd) K.C.Ramrakha

Exhibits

Exhibit "K18"

Letter,
Ramrakhas to
Grahame & Co.

3rd September
1973

Exhibits

Exhibit "K19" - Letter, Grahame & Co.
to Ramrakhas

Exhibit "K19"
Letter,
Grahame & Co.
to Ramrakhas
19th September
1973

GRAHAME & CO.
BARRISTERS & SOLICITORS

CLJ/et

19th September, 1973

Messrs. Ramrakhas,
Solicitors,
SUVA.

Dear Sirs,

re: Amratlal Jamnadas ats Gulab Ben
Supreme Court Civil Action No.297 of 1969

10

In our letter to you of the 27th ult. we informed you, inter alia, that we were attending to prepare and file an Affidavit of Documents in the possession of the defendant and/or in our possession, and noted that you were also attending to prepare and file an Affidavit of Documents in the possession of the plaintiff and/or in your possession.

We then spoke again in the matter with your Mr. K.C. Ramrakha in the Supreme Court Library before the hearing in Chambers, Supreme Court, Suva on the 11th inst. of the defendant's Summons for Leave to Amend Defence. You then suggested to us that Affidavits of Documents be dispensed with, and that a comprehensive list of all documents which both parties intended to tender in Court be prepared and agreed upon. It was agreed that when such a comprehensive list of documents was agreed upon, no documents other than the documents appearing on such comprehensive list of documents could be tendered in Court as evidence by either party.

20

30

We made numerous attempts to contact your Mr. K.C. Ramrakha to meet and to agree on such a comprehensive list of documents, but were unable to do so because your Mr. K.C. Ramrakha was either engaged in Parliament or otherwise. We eventually managed to speak to your Mr. K.C. Ramrakha yesterday when an appointment was made in your office for 8 p.m. yesterday. We consider it sufficient to say the meeting proved abortive, and no discussion took place on such a comprehensive list of documents. We then informed your Mr. K.C. Ramrakha in the presence of your Mr. H.M. Patel and Mr.K. Parshotam,

40

that in the circumstances we insisted that Affidavits of Documents be filed by both parties, and that we would immediately proceed to file an Affidavit of Documents.

We intend to file an Affidavit of Documents sometimes today, and a copy of the same will be served on you. Would you please also let us have an Affidavit of Documents immediately.

10 You will appreciate that the case is set down for hearing in the Supreme Court at Suva on Thursday the 27th inst., and it is therefore imperative that you let us have an Affidavit of Documents immediately, so that inspection of documents can then proceed.

We would inform you that if you do not file an Affidavit of Documents, then your attention is drawn to the provisions contained in Order 24 of the Supreme Court Rules, 1968.

20 We therefore request your urgent attention in the matter.

Yours faithfully,
GRAHAME & CO.

cc. The Chief Registrar,
Supreme Court,
SUVA.

Exhibit "K20" - Letter, Ramrakhas to
Grahame & Co.

RAMRAKHAS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS

20th September, 1973

Messrs. Grahame & Co.,
Barristers and Solicitors,
SUVA.

Dear Sirs,

re: Amratlal Jannadas ats Gulab Ben
Supreme Court Civil Action No.297 of 1969

Exhibits

Exhibit "K19"

Letter,
Grahame & Co.
to Ramrakhas

19th September
1973
(continued)

Exhibit "K20"

Letter,
Ramrakhas to
Grahame & Co.

20th September
1973

30

Exhibits

—
Exhibit "K20"

Letter,
Ramrakhas to
Grahame & Co.
20th September
1973
(continued)

We refer to your letter of 19th September, 1973 and confirm its contents, save and except we consider that you misunderstood the writer who had planned the appointment for 8 a.m. yesterday. He clearly recalls mentioning to you that Parliament would not sit yesterday morning and he would be free. We consider that there was a genuine misunderstanding of the appointment, and regret that you were inconvenienced.

The crucial document is the Sale and Purchase Agreement. We forward to you a photocopy of the same. We also forward to you two other signed agreements which you may photocopy and return to our clerk who will produce the same to you.

10

Other relevant documents will comprise correspondence, certified true copies of the title, mortgage, and copies of the transfer and if you wish it the caveat lodged.

Our affidavit of documents will be filed and served on you today.

20

Please let us know if you wish to have mutual inspection of documents. We consider the affidavit of documents filed by you incomplete because your client should also discover rents receipts etc. for rents he has been collecting from the tenants. He also had made no mention of the cheque for \$2000.00 he collected from Messrs. Parshotam & Co. We have had to check these and hence our delay, but we are now in a position to let you have a complete affidavit of documents.

30

Yours faithfully,
R A M R A K H A S

Per: (Sgd) K.C. Ramrakha.

Exhibit "L" Mortgage

Exhibits
Exhibit "L"
Mortgage
3rd October
1956



FIJI

MORTGAGE

The Land (Transfer and Registration) Ordinance, Cap. 120

ANRATUAN, JANIADAB (F/n Janadas) of Suva in the Colony
of Fiji, Storekeeper

No. 62056

REGISTRATION FEES.

Lodgment	12.6
Memorial	8.0
Total	20.6

Revenue Receipt No. 8577

Initials [Signature]

hereinafter called the mortgagor
being a person subject to such leases mortgages and encumbrances as are notified by
the instrument underwritten or endorsed hereon of the following land :-

Lot	Number	Description	Province (Island)	District or Town	ACRA
O.T.	9077	Lot 1 on D.P. 2177	Viti Levu	Suva	22.9

CANCELLED BY [Signature] 1956

In consideration of the sum of (£ - : 1:) ONE SHILLING this copy lent
and advanced to the Mortgagor by ROBERT CROMPTON of Suva, Solicitor
hereinafter called "the Mortgagee" (the receipt of which and the
Mortgagee doth hereby admit and acknowledge) AND in consideration of
such further advances as the Mortgagee may make to the Mortgagor from
time to time in his absolute discretion (the term "further advances" to
include all monies owing or indebtedness incurred by the Mortgagor to
the Mortgagee on any account whatsoever) BOTH HEREBY CONTAINING with
the Mortgagee FIRSTLY that he will repay to the Mortgagee the said
sum of 1/- (ONE SHILLING) and all further advances together with interest
at the rate hereinafter mentioned ON DEMAND but in the meantime and
until such demand shall be made and complied with by monthly payments
of not less than 250:0:0 (FIFTY POUNDS) each inclusive of interest the
first of every payments to be made on the 28th day of February 1957
PROVIDING that the Mortgagor will pay interest on the said sum of 1/-
(ONE SHILLING) and further advances or so much thereof as shall remain
outstanding from time to time after the rate of 25:10:0 (25 PER CENT PER
ANNUM) per centum per annum computed as to the said sum of 1/-
(ONE SHILLING) from the date hereof and as to any further advance from
the date of such advance and payable at the time or times hereinafter
set forth for payment of principal.

(FOR OFFICE USE.)

Mortgage No. 62056

Registered No. 12 OCT 1956 at 12.45 am.

[Signature]
Registrar of Titles.

LODGED BY
CROMPTON,
Solicitor.
SUVA, Fiji.

Date 17/10/56

Documents CT 5012

Exhibit "L" Mortgage

Exhibits

Exhibit "L"
Mortgage
3rd October
1956
(continued)

THIRDLY that the mortgagor will continue to pay interest under this mortgage until all moneys hereby secured are paid.

FOURTHLY that the mortgagor will insure in the name of the mortgagee against fire storm hurricane and tempest all buildings fixtures improvements and fittings now or at any time erected and built or used on the said land in the full insurable value thereof in some office to be approved of by the mortgagee. And all policies and receipts for moneys paid and other usual evidences of insurance shall be given to the mortgagee immediately upon the issue thereof. And that in the event of loss or damage by fire storm hurricane or tempest of any of the buildings fixtures and improvements or other fittings now or at any time hereafter upon the said land the mortgagee shall alone have full power to settle and compromise any claim against any insurance company or companies under any policies now in existence or that may hereafter be issued and the sum or sums so received or obtained on account of such insurance shall be applicable either in or towards repairs or rebuilding or shall be credited to the mortgagor at the option of the mortgagee. And in case the mortgagor shall at any time fail to effect or maintain such insurance as aforesaid it shall be lawful for but not obligatory upon the mortgagee to effect or keep up the same.

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED —

1. That if any interest shall remain unpaid after it has become due it shall be lawful for the mortgagee to add such interest to the principal as from the day upon which it ought to have been paid and all accounts so added shall be treated as part of the principal sum owing and bear interest accordingly. Provided that nothing herein contained shall prejudice or affect the rights, powers and remedies of the mortgagee on default in payment of any interest on the due date.
2. That all moneys costs and expenses legal and otherwise which shall be paid or incurred by the mortgagee in connection with the account of the mortgagor or this security or in connection with or for the exercise of any power or powers of appointment given to the mortgagee by these presents or otherwise in connection with the said premises together with interest for the same at the rate aforesaid from the time of respective times of the same having been paid or incurred shall be repaid to the mortgagee by the mortgagor on demand AND such repayment shall together with interest thereon be aforesaid be covered by this security.
3. That nothing herein contained shall be held to discharge abate or prejudice any other security or securities now held or which may hereafter be held or taken by the mortgagee for payment of any of the moneys intended to be hereby secured nor shall this instrument nor any such other security affect any claim or demand which the mortgagee now has or hereafter may have or be entitled to make against any other person or persons whatsoever as surety or sureties or on any bill or bills of exchange or promissory note or notes to the mortgagee for the money hereby secured or any part thereof or as regards a payment of such money until the same shall have been actually paid in cash.
4. That the right of the mortgagee to sue and recover on any promissory note or other negotiable instrument representing the moneys hereby secured or any part thereof shall not be deemed to have merged in this security.
5. That these presents shall be a running and continuing security notwithstanding any settlement of account or other matter or thing whatsoever until a final discharge thereof shall have been given to the mortgagor.
6. That this security shall include all tanks ranges staves engines pumps plant machinery buildings and fences and all other fixtures which are now or shall at any time during the continuance of this security be brought or placed on the lands hereby mortgaged and that the same and all other fixtures shall be considered part and parcel of the land hereby mortgaged.

Exhibit "L" Mortgage

Exhibits
Exhibit "L"
Mortgage
3rd October
1956
(continued)

... the mortgagee upon default in payment of any money hereby secured or any interest may—
... enter into possession of the mortgaged land by receiving the rents and profits thereof; or
... restrain upon the occupier or tenant of the said land for the rent then due; or
... bring an action of ejectment to recover the said land either before or after entering into the receipt of the rents and profits thereof or making any distress as aforesaid and either before or after any sale of such land effected under the power of sale given or implied in this mortgage
... manner in which the mortgagee might have made such entry or distress or brought such action if the principal sum were secured to the mortgagee by a conveyance of the real estate in the mortgaged land.

8. That any notice to or demand against the mortgagor may be in writing signed by or on behalf of the mortgagee and served on the mortgagor by giving the same to the mortgagor or by leaving the same on the mortgaged land or by sending the same through the post office by a registered letter directed to the mortgagor at the address of the mortgagor appearing in this mortgage.

9. That the period of one month mentioned in Section 61 of the Land (Transfer and Registration) Ordinance Cap. 120 is for the purposes of this security expressly reduced to and fixed at seven days.

10. That in the event of sale under this security if the land hereby mortgaged shall fail to realize the amount due at the date of the sale and all costs charges and expenses incidental thereto the mortgagor shall forthwith pay to the mortgagee such balance as shall then remain unpaid.

AND for the better security to the mortgagee the repayment in manner aforesaid of all money hereby secured or intended so to be the mortgagor hereby mortgagee the land above described.

IN WITNESS whereof the mortgagor hath hereunto signed his name this 3rd day of October 1956

Amritlal Jambhadas

Signature or left thumb-mark of the mortgagor.

The signature ~~Amritlal Jambhadas~~ "AMRITLAL JAMBHADAS" made in my presence and I verily believe that such signature is of the proper hand-writing ~~or left thumb-mark~~ of the person described as ~~Amritlal Jambhadas~~ (1/0 Jambhadas) or Suva in the Colony of Fiji, ~~Stockkeeper~~

the mortgagor and I certify that I read over and explained the contents hereof to the mortgagor in the Hindi language and the mortgagor appeared to understand the meaning and effect thereof.

[Signature]
Solicitor, Suva

Exhibits
Exhibit "L"
Mortgage
3rd October
1956
(continued)

Exhibit "L" Mortgage

Correct for the purposes of the Land (Transfer and Registration) Ordinance, Cap. 120.

Belcher
Solicitors for the Mortgagee.

MORTGAGE

TO

ROBERT CROMPTON

ARLAIN JUDKINS
(P/M JEREMIAH)

FROM

CROMPTONS,
Solicitors,
SUVA.

Full Title & Details here

TRANSFER

REG 72753 Registered 24 Dec 1957. 10 am

To **ROBERT ALLEN CROMPTON**
AND **ROBERT NIXON CALDWELL**

as Trustees

Tomack
DEPUTY Registrar of Titles

RECORD OF DEATH

100380 Registered 27 April 1967

Recording the death of **ROBERT NIXON CALDWELL** who died on Jan, 1967

M. Williams
DEPUTY Registrar of Titles

RECORD OF DEATH

REG 88993 Registered 8 Oct 1964. 2 pm

To of **Robert Allen Crompton**
on 12 May 1964

W. Williams
DEPUTY Registrar of Titles

APPOINTMENT OF TRUSTEES

100381 Registered 27 April 1967

Yesliar (his Mortgage) in favour of **NEIL FALVEY** and **ALFRED LEE** as Trustees

W. Williams
DEPUTY Registrar of Titles

APPOINTMENT OF TRUSTEES

REG 88994 Registered 8 Oct 1964. 2 pm

Foreclosing his mortgage in favour of **JOHN NEIL FALVEY** and **Robert Nixon Caldwell** AS TRUSTEES

W. Williams
DEPUTY Registrar of Titles

IN THE PRIVY COUNCIL

No. 15 of 1975

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

B E T W E E N

AMRATLAL JAMNADAS (s/o JAMNADAS)

Appellant

- and -

GULAB BEN (d/o RATANJI)

Respondent

RECORD OF PROCEEDINGS

A.L.PHILLIPS & CO.
Terminus Chambers,
6 Holborn Viaduct,
London, EC1A 2AH.

Solicitors for Appellant

WILSON FREEMAN
6/8 Westminster Palace
Gardens,
Artillery Row,
London, SW1P 1RL.
Solicitors for Respondent