

25/81

IN THE PRIVY COUNCIL

No. 10 of 1979

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O N A P P E A L

FROM THE FIJI COURT OF APPEAL

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B E T W E E N :

CHANDRIKA PRASAD s/o Guddulal

Appellant  
(Plaintiff)

- and -

1. GULJARA SINGH s/o Hari Singh
2. NATIVE LAND TRUST BOARD
3. SHIU PRASAD s/o Suchit Bhagat
4. BRIJ NATH s/o Hardeo
5. CHANDRIKA PRASAD s/o Halka

Respondents  
(Defendants)

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RECORD OF PROCEEDINGS

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PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
Westminster,  
London, SW1E 6HB

Solicitors for the Appellant

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

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B E T W E E N :

CHANDRIKA PRASAD s/o Guddulal Appellant  
(Plaintiff)

- and -

- 10 1. GULJARA SINGH s/o Hari Singh  
 2. NATIVE LAND TRUST BOARD  
 3. SHIU PRASAD s/o Suchit Bhagat  
 4. BRIJ NATH s/o Hardeo  
 5. CHANDRIKA PRASAD s/o Halka Respondents  
(Defendants)

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RECORD OF PROCEEDINGS

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No. 1

WRIT OF SUMMONS  
25th March 1971

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In the  
Supreme Court

No.1  
Writ of  
Summons

IN THE SUPREME COURT OF FIJI No. 76 of 1971

25th March  
1971

B E T W E E N: CHANDRIKA PRASAD s/o Guddu  
 Lal of Tabia Fiji Cultivator  
Plaintiff

- 20 A N D : 1. GULZARA SINGH s/o Hari Singh  
 of Labasa Moneylender  
 2. NATIVE LAND TRUST BOARD  
 3. SHIU PRASAD s/o Suchit Bhagat  
 as Trustee  
 4. BAIJ NATH s/o Hardeo as Trustee  
 5. CHANDRIKA PRASAD s/o Halka as  
 Trustee  
 all three of Tabia and Trustees  
 of Tabia Sanatan Dharam School  
 30 Committee Defendants

In the  
Supreme Court

No.1  
Writ of  
Summons

25th March  
1971

(continued)

ELIZABETH the Second, by the Grace of God, Queen  
of Fiji and of Her other Realms and Territories,  
Head of the Commonwealth.

To: 1. GULZARA SINGH s/o Hari Singh  
of Labasa Moneylender  
2. NATIVE LAND TRUST BOARD  
3. SHIU PRASAD s/o Suchit Bhagat as  
Trustee  
4. BAIJ NATH s/o Hardeo as Trustee  
5. CHANDRIKA PRASAD s/o Halka as Trustee 10  
all three of Tabia and Trustees of  
Tabia Sanatan Dharam School Committee.

WE COMMAND you, that within 8 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 CHANDRIKA PRASAD s/o Guddu Lal of Tabia  
Fiji Cultivator and take notice that in default  
of your so doing the plaintiff may proceed 20  
therein, and judgment may be given in your  
absence.

WITNESS the Honourable SIR CLIFFORD JAMES  
HAMMETT Chief Justice of Fiji, at Suva this  
25th day of March, 1971.

R A M R A K H A S

Per: (Sd.) K.C. Ramrakha  
Solicitors for the Plaintiff

NOTE. - This writ may not be served more than  
12 calendar months after the above  
date unless renewed by order of the 30  
Court.

DIRECTION FOR ENTERING APPEARANCE

The Defendant may enter an appearance in  
person or by a solicitor by handing in the  
appropriate forms, duly completed, at the  
Supreme Court Registry at

Note - Where the Writ is indorsed with or served  
with a statement of claim, if the defendant  
enters an appearance, then, unless a summons  
for judgment is served on him in the meantime,  
he must also serve a defence on the solicitor 40  
for the plaintiff within 14 days after the last  
day of the time limited for entering an  
appearance, otherwise judgment may be entered  
against him without notice.

GENERAL ENDORSEMENT OF CLAIM

In the  
Supreme Court

No.1  
Writ of  
Summons

25th March  
1971

(continued)

10 The plaintiff's claim against the first defendant is that all moneylendings transactions between him and the plaintiff are null, void, and illegal on the grounds that the defendant was then an unregistered moneylender and charged extortionate rates of interest and the documents in support of the said transactions did not disclose the true sums lent, and did not comply with the Moneylenders' Ordinance

The Plaintiff's further claims against the defendants and all of them is that the transfer or issuing of a Native Lease number 13810 to the third, fourth, and fifth defendants is fraudulent and contrary to the laws of Fiji and for a declaration that the plaintiff is the rightful lessee of the same and for consequential relief

20 Alternatively, the claim of the plaintiff is against the defendants for the sum of \$100,000.00 (one hundred thousand dollars) damages for fraud, and illegal transfer or issue of his lease

And the plaintiff claims an injunction against the defendants, their servants, or agents, or any person acting by through or under them from interfering with the plaintiff's occupation of the land comprised in Native Lease Number 13810 or interfering with his cane contract in respect of the said land

30 AND COSTS

In the  
Supreme Court

No.2  
Statement  
of Claim

22nd August  
1972

No. 2

STATEMENT OF CLAIM  
22nd August 1972

No. 76 of 1971

BETWEEN: CHANDRIKA PRASAD s/o Guddu Lal  
of Tabia Fiji, Cultivator Plaintiff

A N D: 1. GULZARA SINGH s/o Hari Singh  
of Labasa Moneylender  
2. NATIVE LAND TRUST BOARD  
3. SHIU PRASAD s/o Suchit Bhagat 10  
as Trustee  
4. BAIJ NATH s/o Hardeo as Trustee  
5. CHANDRIKA PRASAD s/o Halka as  
Trustee  
all three of Tabia and Trustees  
of Tabia Sanatan Dharam School  
Committee  
Defendants

STATEMENT OF CLAIM

1. The plaintiff is, and has been at all 20  
material times a sugar cane grower within the  
meaning of the Sugar Industry Ordinance Cap.180  
and in pursuance thereto the plaintiff is the  
holder of sugar cane contract Number 4020  
Wailevu Sector over the land hereinafter  
described.

2. The plaintiff is, and has been at all  
material times in occupation of Native Land now  
contained in Native Lease Number 13810 registered  
as hereinafter described and being land known 30  
as Delainvuniloqui situate in the District of  
Labasa and the province of Macuata and measuring  
11 acres 2 roods 16 perches (which said land is  
hereinafter referred as "the leasehold") and  
the plaintiff holds the cane contract over the  
leasehold.

3. The land the subject of the leasehold is  
owned by the second defendant which is a statutory  
body under the provisions of the Native Land  
Trust Ordinance and is the lessor thereof. 40

4. The leasehold is agricultural land within  
the meaning of the Agricultural Landlord and  
Tenant Ordinance, and the plaintiff is a tenant

under the said Ordinance.

In the  
Supreme Court

No.2  
Statement  
of Claim

22nd August  
1972

(continued)

5. The second defendant agreed by its usual approval notice in writing to grant to the plaintiff a registrable thirty year lease in respect of the leasehold commencing from the 1st day of July, 1965 at an annual rental of \$184.00 per annum, and the plaintiff stayed on the leasehold, cultivated the same, and paid the said rent.

10 6. The second defendant has neglected or refused to grant to the plaintiff a proper registrable lease in respect of the leasehold in accordance with its agreement, or under the provisions of the Agricultural Landlord and Tenant Ordinance.

20 7. The first defendant is, and has been, at all material times, a practising moneylender within the meaning of the Moneylenders Ordinance Cap.210, but was not duly licensed under the provisions of the same, having paid no licence fees for the year 1967 until the 9th February, 1968 and having paid fees for the year 1968 on the 4th day of March, 1968.

8. The plaintiff, and the first defendant, and his father GUDDU LAL, had moneylending dealings with one another from time to time.

9. The particulars of the transactions between the plaintiff, and the first defendant are as follows :-

30	<u>ALLEGED DATE OF TRANSACTION</u>	<u>AMOUNT IN DOCUMENT</u>	<u>AMOUNT LENT IN FACT</u>
	1. 28. 4.1964	78.00	54.00
	2. 29. 4.1964	50.00	40.00
	3. 30. 7.1964	80.00	74.00
	4. 3. 7.1964	306.00	286.00
	5. 30. 4.1965	76.00	62.00
	6. 24. 5.1965	50.00	40.00
	7. 30. 6.1965	120.00	95.00
	8. 5. 7.1967	28.00	23.00
40	9. 26. 7.1967	90.00	84.00
	10. 19. 9.1967	50.00	40.00
	11. 16.11.1967	300.00	250.00
	12. 14.12.1967	60.00	48.00
	13. 22. 2.1968	926.90	100.00
	14. 28. 5.1968	80.00	64.00
	15. 1.11.1968	106.00	80.00

10. A. The plaintiff says that the said documents were procured by the fraud of the first defendant

particulars whereof are as follows :-

- (a) Exorbitant interest has been charged;
- (b) The true sums lent have not been endorsed on the said documents;
- (c) The said documents were not read over and explained by the first defendant, or his servants or agents to the plaintiff at the time of the execution;
- (d) The said documents do not contain the true note or memorandum of the agreement between the parties as required by Section 16 of the Money-lenders' Ordinance, nor were any true contracts or notes or memorandum of the contracts delivered by the first defendant to the plaintiff at the time of the making of the said documents or the loans covered by the said documents; 10
- (e) The first defendant was not licensed to lend monies at the time. 20

10. B. In the alternative, the plaintiff says that by reason of the matters aforesaid, the said documents are unenforcable. As to the alleged mortgage deed, the plaintiff says :-

- (a) The said mortgage deed was made on the 16th November, 1967 and not on the 22nd February, 1968.
- (b) The said mortgage deed is invalid in law inasmuch as the plaintiff could not grant a mortgage in law over the leasehold; 30
- (c) If the approval notice did not create an enforcable right to obtain a lease, the same could not be mortgaged in law;
- (d) The said mortgage deed does not set out all the terms of the contract;
- (e) The first defendant was not licensed to lend monies at the time. 40

10. C. In any event the said documents were illegal by reason of the matters aforesaid.

11. The first defendant does not keep books of accounts within the meaning of section 18 of the Moneylenders Ordinance.

In the  
Supreme Court

10 12. The third, fourth and fifth defendants are trustees of the Tabia Sanatan Dharam School Committee, the members of which are the parents friends, supporters and organisers of the Tabia Sanatan Dharam School, the said organisation being unincorporated but its affairs are being run by annual or special general meetings of the members or by a committee appointed by the said meetings of the members, or by its trustees where the said trustees are so authorised.

No.2  
Statement  
of Claim  
22nd August  
1972  
(continued)

13. The plaintiff is, and has been, at all material times a member of the said organisation controlling managing, and owning the Tabia Sanatan Dharam School.

20 14. The plaintiff has donated monies for the building and upkeep of the said school, and the plaintiff's children attend the said School.

15. In or about the month of June, 1970, the first defendant purported to exercise his powers under his said mortgage, and advertised the leasehold for sale.

30 16. The plaintiff protested against the sale purported exercise of power, and by letter dated the 2nd day of June, 1970 written by his then solicitors Messieurs Gibson & Co. wrote to the second defendant complaining about the sale, and asking the second defendant to refrain from consenting to any sale or transfer of the leasehold.

17. By letter dated the 24th day of June, 1970, the second defendant replied to the said solicitors, and stated that the contents of the letter 2nd June, 1970 had been noted, and placed on record.

40 18. The plaintiff requested the first defendant to supply to him proper accounts under the Moneylenders Ordinance, and tendered the statutory fee therefore, but the first defendant refused or neglected to supply such accounts, and was thereby precluded from exercising any of his powers as a lender under the said Ordinance.

19. The plaintiff did not at any time surrender the leasehold, nor did he consent to sale of the



same, and the leasehold has never been validly transferred or surrendered by him, and he remains entitled to hold, and enjoy the leasehold and is a valid, and legal tenant of the second defendant both under the provisions of the Agricultural Landlord and Tenant Ordinance, and otherwise.

20. The second defendant has purported to issue an entirely fresh original lease back dated from the 1st day of July, 1965 for a period of thirty years to the third, fourth, and fifth defendants as purported trustees of the Tabia Sanatan Dharam School Committee and the said purported lease has been registered with the Registrar of Titles as Lease Number 13810. 10

21. The said lease has been registered by the fraud of the defendants particulars whereof are as follows :-

(a) the three defendants have no authority to hold the said lease, as they have never been appointed as trustees to hold the said lease, and no meeting or resolution of the organisation controlling the Sanatan Dharam School has been passed either appointing them as trustees for his purpose or to purchase or hold the leasehold; 20

(b) alternatively, the plaintiff says that if any appointment of trustees was made, it is ineffective in law; 30

(c) the three defendants have been treated as if they are original lessees of the second defendant;

(d) no sale or transfer of the leasehold has been disclosed either to the Commissioner of Stamp Duties, or the second defendant;

(e) the plaintiff's rights as a tenant under the Agricultural Landlord and Tenant Ordinance have been breached;

(f) the second defendant granted a fresh lease of the same property to two different persons, one of whom was the plaintiff who was entitled to the protection of the Agricultural Landlord and Tenant Ordinance; 40

(g) the first defendant did not have any right

to sell, transfer or part with the leasehold or grant a fresh lease as it purported to do;

In the  
Supreme Court

(h) the particulars of the lease are false as the third, fourth and fifth defendants were never entitled to the lease, from the 1st day of July, 1965 from the 1st July 1965 and the lease has been registered as a false document.

No.2  
Statement  
of Claim  
22nd August  
1972

10 (i) the said transaction did not receive the due consent of the second defendant under the provisions of the Native Land Trust Ordinance particularly section thereof.

(continued)

22. In the alternative, the plaintiff says that the granting of the said lease to the third, fourth and fifth defendant was illegal by reason of the matters aforesaid.

23. In the further alternative, the plaintiff says that the said lease is null, and void by reason of the matters aforesaid.

20 24. The plaintiff further says that the third, fourth and fifth defendants acted in fraud, or in breach of trust of the members of the organisation controlling the Sanatan Dharam School at Tabia, and in plaintiff a member thereof in obtaining the plaintiff's leasehold particulars whereof are as follows :-

(a) The third, fourth and fifth defendants did not hold any meeting of the organisation nor did they obtain the specific authority of the organisation to purchase or hold the leasehold

30 (b) The third, fourth and fifth defendants used the funds of the organisation without its specific authority to do so to obtain a fresh lease of the plaintiff's leasehold the second defendant

(c) The third, fourth and fifth defendants were not entitled to act in trustees in respect of the leasehold;

40 (d) The third, fourth and fifth defendants were not entitled to a lease of the leasehold from the 1st day of July, 1965 and this particulars in the lease, a public document is false, and fraudulent, and the defendants secured the registration of this document despite its falsity;

25. In the further alternative, the plaintiff says that by reason of the foregoing matters the

In the  
Supreme Court

No.2  
Statement  
of Claim  
22nd August  
1972  
(continued)

lease as registered is false and fraudulent,  
and the plaintiff is entitled to the setting  
aside of the same, or an annulment of the same.

26. The plaintiff says that at all material  
times, the value of the leasehold was \$15000.00  
(FIFTEEN THOUSAND DOLLARS).

27. The plaintiff says that if he is deprived  
of the leasehold he will suffer special and  
general damages amounting to \$100,000.00  
particulars of special damage being

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- (a) Loss of user of the leasehold;
- (b) Loss of earnings for thirty years at  
approximately \$1000.00 per year;
- (c) Loss of his dwelling houses on the said  
land of an approximate value of \$5000.00;
- (d) General loss.

WHEREFORE the plaintiff claims :

- (a) that he be declared a tenant of the  
leasehold under the provisions of the  
Agricultural Landlord and Tenant  
Ordinance or by agreement or otherwise and  
for consequential relief including an  
order that the second defendant to grant  
to the plaintiff a proper registrable  
lease of the leasehold
- (b) A declaration that the registered lease  
number 13810 has been obtained fraudulent,  
or that the same is illegal, or null and  
void and for consequential relief
- (c) an injunction to restrain the defendants,  
their servants, or agents, or any person  
claiming by through or under them from  
interfering with the plaintiff's quiet use  
and enjoyment of the leasehold
- (d) a declaration that the transaction between  
the plaintiff and the first defendant are  
unenforcable, or illegal, or null and  
void, and for consequential relief
- (e) in the alternative, if the leasehold  
has been validly conveyed, and cannot  
be returned to the plaintiff \$100,000  
by way of damages

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(f) Such further or other relief in the premises as to this Honourable Court shall seem meet

In the  
Supreme Court

(g) Costs.

No.2  
Statement  
of Claim

DELIVERED this 22nd day of August, 1972

22nd August  
1972

R A M R A K H A S

(continued)

Per: Sd.

10 This Statement of Claim is delivered by  
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. 3

DEFENCE OF 1ST DEFENDANT  
(UNDATED)

No.3  
Defence of  
1st Defendant  
Undated

IN THE SUPREME COURT OF FIJI No.76 of 1971

BETWEEN: CHANDRIKA PRASAD s/o Guddu Lal  
of Tabia, Fiji, Cultivator

PLAINTIFF

20 A N D : 1. GULZARA SINGH s/o Hari Singh  
of Labasa Moneylender  
2. NATIVE LAND TRUST BOARD  
3. SHIU PRASAD s/o Suchit Bhagat  
as Trustee  
4. BAIJ NATH s/o Hardeo as Trustee  
5. CHANDRIKA PRASAD s/o Halka as Trustee  
all three of Tabia and Trustees of  
Tabia Sanatan Dharam School Committee

DEFENDANTS

30 DEFENCE OF THE 1ST DEFENDANT

1. THAT he denies the contents of paragraph (1) of the Statement of Claim. In the alternative he says that if the Plaintiff did hold such Cane Contract after the 29th day of October, 1970 he has been holding same unlawfully and without any colour of right.

2. THAT as to paragraph (2) of the Statement

In the  
Supreme Court

No.3  
Defence of  
1st Defendant

Undated

(continued)

of Claim he says :

- (a) that the Plaintiff has been unlawfully and as a trespasser occupying the said land;
  - (b) that if he is holding the said Cane Contract he has been holding same unlawfully and without colour of right;
  - (c) that except as herein expressly admitted he denies each and every allegation contained in paragraph (2) of the Statement of Claim. 10
3. THAT he admits the allegations contained in paragraph (3) of the Statement of Claim.
4. THAT as to paragraph (4) of the Statement of Claim he says :
- (a) that the said land is an agricultural land within the meaning of the words in Agricultural Landlord and Tenant Ordinance 1966 and 20
  - (b) that he denies that the Plaintiff is a tenant under the said Ordinance.
5. THAT as to paragraph (5) of the Statement of Claim he says :
- (a) that subject to certain express conditions therein stated, an Approval Notice was issued to the Plaintiff in respect of the said land;
  - (b) that the Plaintiff has at all material times been in unlawful occupation of the said land; 30
  - (c) that except as herein expressly admitted he denies each and every allegation contained therein.
6. THAT as to paragraph (6) of the Statement of Claim he says :
- (a) that the Plaintiff having duly executed Mortgage dated the 22nd day of February 1968 to the 1st Defendant (to which the 2nd Defendant consented on the 21st March, 1968) and having 40

made default in payment of principal and interest mentioned therein, the 1st Defendant lawfully exercised his power of sale and under the said Mortgage and sold to them the Plaintiff's interest in the said land therein;

In the  
Supreme Court

No.3

Defence of  
1st Defendant

Undated

(continued)

10

(b) that on the 29th day of October 1970 the said Defendant lawfully consented to the transfer of the Plaintiff's interest duly by the 1st Defendant as Mortgagee in their favour;

(c) that at all material times the Plaintiff was not entitled to receive any Agreement to lease or Lease or any other document from the 2nd Defendant in respect of the said land.

(d) that except as herein expressly admitted he denies each and every allegation contained therein.

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7. THAT as to paragraph (7) of the Statement of Claim he says :

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(a) that he admits that he has been a moneylender within the meaning of the Moneylenders' Ordinance Cap.210 but says that he had entrusted the payment of the licence fees in cash for the year 1967 in 1967 to one Ram Rattan (s/o Charlie Algu) who had fraudulently converted the said monies to his own use and that the 1st defendant did not learn about it until 1968 when he paid licence fees for the year 1968. That in the result he had to make a second payment in the year 1968.

(b) that except as herein expressly admitted he denies each and every allegation contained in paragraph (7) of the Statement of Claim.

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8. THAT he admits that he had moneylending transactions with the Plaintiff, and also with one Guddu Lal from time to time.

9. THAT as to paragraph (9) of the Statement of Claim he says :

(a) that he admits all the dates of transactions and their respective amounts in the documents as enumerated

In the  
Supreme Court

No.3  
Defence of  
1st Defendant

Undated  
(continued)

in the Statement of Claim but categorically denies that the respective amounts lent were less than the amounts recited in the respective documents.

(b) that the Plaintiff had in addition also borrowed from him the sum of \$580.00 (FIVE HUNDRED EIGHTY DOLLARS) on the 5th day of July, 1967 for which the Plaintiff has not accounted in his Statement of Claim. 10

(c) that except as herein expressly admitted he denies each and every allegation contained in paragraph (9) of the Statement of Claim.

10. (A) THAT he denies each and every allegation contained in paragraph (10)(A) of the Statement of Claim.

10. (B)

(a) That he denies each and every allegation in paragraph (10)(B) of the Statement of Claim and further says that a mortgage deed was first made on the 16th day of November 1967 but it was not forwarded to the second defendant for its consent owing to the fraudulent action of the said Ram Rattan (s/o Charlie Algu) and, on the 22nd day of February 1968 the Plaintiff had borrowed further monies (which said advances are acknowledged by the Plaintiff in paragraph (9) of the Statement of Claim) when the second deed of mortgagee was executed and duly consented to by the second defendant. 20 30

(b) That except as herein expressly admitted he denies each and every allegation.

10. (C) THAT he denies each and every allegation contained in paragraph (10)(C) of the Statement of Claim. 40

11. THAT he denies each and every allegation contained in paragraph (11) of the Statement of Claim.

12. THAT he denies each and every allegation contained in paragraph (12) of the Statement of Claim.

13. THAT he denies knowledge of the matters raised in paragraph (13) of the Statement of Claim and therefore denies the same.

In the  
Supreme Court

14. THAT he denies knowledge of the matters raised in paragraph (14) of the Statement of Claim and therefore denies the same.

No.3  
Defendant of  
1st Defendant  
Undated

15. THAT as to paragraph (15) of the Statement of Claim he says :

(continued)

10 (a) on or about the 10th February, 1970 the 1st Defendant caused a notice of demand to be served on the Plaintiff requesting him to pay the moneys due under the said Mortgage and caused the same to be served on the Plaintiff on the 19th February, 1970;

20 (b) on or about the 2nd and on or about the 16th days of May, 1970, the 1st Defendant caused a Notice to be advertised inviting Tenders for the sale and purchase of the said land;

(c) that sometime between 2nd May, 1970 and 2nd June, 1970 they submitted a Tender to purchase the said land and same was accepted by the 1st Defendant;

30 (d) that between the 2nd June, 1970 and the 29th October, 1970 the said sale was completed and on the 29th October, 1970 the 2nd Defendant as Lessor endorsed its consent on the relevant transfer as required by law. Thereafter all Plaintiff's interest in the said land vested in therein;

40 (e) that between 29th October, 1970 and the 8th March, 1971 the 2nd Defendant issued a Lease of the said land directly in his name. Such lease was executed on the 8th March, 1971 and was registered on the 8th March, 1971 as Lease No. 13810;

(f) that since the registration of the said Lease their title to the said land has the benefit of protection of the provisions of Land (Transfer and Registration) Ordinance Cap.136 and Land Transfer Act 1971;



(g) that except as herein expressly admitted they deny each and every allegation contained therein.

16. THAT he does not know and therefore he denies the allegations contained in paragraph (16) of the Statement of Claim.

17. THAT he does not know and that therefore he denies the allegations contained in paragraph (17) of the Statement of Claim.

18. THAT as to paragraph (18) of the Statement of Claim he says : 10

(a) that under a covering letter dated 13th April 1970 he had supplied the Plaintiff's then Solicitors Messrs. Gibson & Co. of Labasa not only the Statement of Account but also copies of all the documents relating to the transactions between the Plaintiff and himself.

(b) that under a covering letter dated the 22nd of March, 1971 he had again supplied to the Plaintiff inter-alia a Statement of Account dated 22nd March 1971 and a Statement of Account dated 30th October, 1970. 20

(c) that except as herein expressly admitted he denies each and every allegation contained in paragraph (18) of the Statement of Claim.

19. THAT he repeats his allegations referred to in paragraphs (6) and (15) hereof and denies each and every allegation contained in paragraph (19) of the Statement of Claim. 30

20. THAT the second Defendant lawfully and properly issued an entirely new lease in their name as Trustees of the Tabia Sanatan Dharam School which said lease has been registered as Lease No. 13810. Except as herein as expressly admitted he denies the allegations contained in paragraph (20) of the Statement of Claim. 40

21. THAT he repeats that the Plaintiff executed a valid and proper Mortgage in favour of the 1st Defendant, that the Plaintiff made default in the payment of the money secured

10 thereunder, that the 1st Defendant lawfully and properly exercised his power of sale and transferred the Plaintiff's interest in the said land to him as Trustee of Tabia Sanatan Dharam School in a lawful manner and that he has always held the said land lawfully as bona fide purchaser for value without notice of the alleged fraud or of any fraud (express or otherwise) whatsoever. Except as herein as expressly admitted he denies each and every allegation contained in paragraph (21) of the Statement of Claim.

22. THAT he denies the allegations contained in paragraph (22) of the Statement of Claim.

23. THAT he denies the allegations contained in paragraph (23) of the Statement of Claim.

24. THAT he denies any knowledge of the matters raised in paragraph (24) of the Statement of Claim and therefore denies the same.

20 25. THAT he denies the allegations contained in paragraph (25) of the Statement of Claim.

26. THAT he denies the allegations contained in paragraph (26) of the Statement of Claim.

27. THAT he denies the allegations contained in paragraph (27) of the Statement of Claim.

28. THAT by way of further defence he says that the Plaintiff is estopped from alleging any fraud against any of the Defendants upon the grounds :

30 (a) that the Plaintiff was well aware of the provisions of the Mortgage executed by him in favour of the 1st Defendant dated the 2nd day of February, 1968;

(b) that the Plaintiff was well aware that he made default in the payment of the moneys secured under the said Mortgage;

(c) that the Plaintiff was well aware that the 1st Defendant demanded the payment of such moneys;

40 (d) that the Plaintiff was well aware that in as much as the Plaintiff made default in the payment of the said moneys, the 1st Defendant was exercising and did in fact exercise his powers of sale under the said Mortgage;

In the  
Supreme Court

No.3  
Defence of  
1st Defendant

Undated  
(continued)

- e) that the Plaintiff was well aware that the 1st Defendant invited tenders for the said land, that the said land was being and was in fact sold to them;
- (f) that notwithstanding these facts the Plaintiff did not proceed to stop the 1st Defendant from exercising his lawful rights either by legal proceedings or otherwise and on the contrary took steps to transfer the said land to some other person fraudulently and with intent to defraud all parties contained. 10
- (g) that the Plaintiff did with intent to default wilfully refuse to renew Crop Lien No. 67/1308 of 5th July, 1967 in favour of the 1st Defendant.

DELIVERED this                      day of                      1973

PARSHOTAM CHAUHAN & CO.

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Per: Sd.

SOLICITORS FOR THE 1ST  
DEFENDANT

No. 4

DEFENCE OF 3rd, 4th and  
5th DEFENDANTS - 19th  
February 1973

In the  
Supreme Court

No.4  
Defence of  
3rd, 4th and  
5th Defendants

IN THE SUPREME COURT OF FIJI      No.76 of 1971

19th February  
1973

B E T W E E N:

CHANDRIKA PRASAD s/o Guddu Lal  
of Tabia, Fiji, Cultivator

PLAINTIFF

10      A N D :

1. GULZARA SINGH s/o Hari Singh  
of Labasa Moneylender
2. NATIVE LAND TRUST BOARD
3. SHIU PRASAD s/o Suchit Bhagat  
as Trustee
4. BAIJ NATH s/o Hardeo as Trustee
5. CHANRIKA PRASAD s/o Halka  
as Trustee  
all three of Tabia and Trustees  
of Tabia Sanatan Dharam School  
Committee

20

DEFENDANTS

DEFENCE OF 3RD, 4TH and 5TH DEFENDANTS

1. THAT they deny the contents of paragraph (1)  
of the Statement of Claim. In the alternative  
they say that if the Plaintiff did hold such  
Cane Contract after the 29th day of October,  
1970 he has been holding same unlawfully and  
without any colour of right.

30      2. THAT they as to paragraph (2) of the  
Statement of Claim they say :

- (a) that the Plaintiff has been unlawfully  
and as a trespasser occupying the said  
land;
- (b) that if he is holding the said Cane  
Contract he has been holding same  
unlawfully and without colour of right;
- (c) that except as herein expressly  
admitted they deny each and every  
allegation contained in paragraph (2)  
of the Statement of Claim.

40

3. THAT they admit the allegations contained in

In the  
Supreme Court

No.4  
Defence of  
3rd, 4th and  
5th Defendants  
19th February  
1973

(continued)

paragraph (3) of the Statement of Claim.

4. THAT as to paragraph (4) of the Statement of Claim they say :

- (a) that the said land is an agricultural land within the meaning of the words in Agricultural Landlord and Tenant Ordinance 1966 and
- (b) that they deny that the Plaintiff is a tenant under the said Ordinance.

5. THAT as to paragraph (5) of the Statement of Claim they say : 10

- (a) that subject to certain express conditions therein stated, an Approval Notice was issued to the Plaintiff in respect of the said land;
- (b) that the Plaintiff has at all material times been in unlawful occupation of the said land;
- (c) that except as herein expressly admitted they deny each and every allegation contained therein. 20

6. THAT as to paragraph (6) of the Statement of Claim they say :

- (a) that the Plaintiff having duly executed Mortgage dated the 22nd day of February, 1968 to the 1st Defendant (to which the 2nd Defendant consented on the 21st March, 1968) and having made default in payment of principal and interest mentioned therein, the 1st Defendant lawfully exercised his power of sale and under the said Mortgage and sold to them the Plaintiff's interest in the said land therein; 30
- (b) that on the 29th day of October, 1970 the said Defendant lawfully consented to the transfer of the Plaintiff's interest duly by the 1st Defendant as Mortgagee in their favour; 40
- (c) that at all material times the Plaintiff was not entitled to receive any Agreement to lease or Lease or any other document from the 2nd

Defendant in respect of the said land.

In the  
Supreme Court

(d) that except as herein expressly admitted they deny each and every allegation contained therein.

No.4  
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3rd, 4th and  
5th Defendants

7. THAT they admit that the Plaintiff had moneylending transactions with the 1st Defendant. Except as herein expressly admitted, they deny each and every allegation contained in paragraph (7) of the Statement of Claim.

19th February  
1973

(continued)

10 8. THAT they admit that the Plaintiff had moneylending transaction with the 1st Defendant. Except as herein expressly admitted, they deny each and every allegation contained in paragraph (8) of the Statement of Claim.

9. THAT they admit that the Plaintiff had moneylending transaction with the 1st Defendant. Except as herein expressly admitted, they deny each and every allegation contained in paragraph (9) of the Statement of Claim.

20 10. (A) THAT they deny each and every allegation contained in paragraph (10)(A) of the Statement of Claim.

10. (B) THAT they deny each and every allegation contained in paragraph (10)(B) of the Statement of Claim.

10. (C) THAT they deny each and every allegation contained in paragraph (10)(C) of the Statement of Claim.

30 11. THAT they deny each and every allegation contained in paragraph (11) of the Statement of Claim.

12. THAT they deny each and every allegation contained in paragraph (12) of the Statement of Claim.

13. THAT they do not admit the allegations contained in paragraph (13) of the Statement of Claim.

40 14. THAT the Plaintiff's children attend the Tabia Sanatan Dharam School. Except as herein expressly admitted they deny each and every allegation contained in paragraph (14) of the Statement of Claim.

15. THAT as to paragraph (15) of the Statement

In the  
Supreme Court

No.4  
Defence of  
3rd, 4th and  
5th Defendants

19th February  
1973

(continued)

of Claim they say :

- (a) on or about the 10th February, 1970 the 1st Defendant caused a notice of demand to be served on the Plaintiff requesting him to pay the moneys due under the said Mortgage and caused the same to be served on the Plaintiff on the 19th February, 1970;
- (b) on or about the 2nd and on or about the 16th days of May, 1970, the 1st Defendant caused a Notice to be advertised inviting Tenders for the sale and purchase of the said land; 10
- (c) that sometime between 2nd May, 1970 and 2nd June, 1970 they submitted a Tender to purchase the said land and same was accepted by the 1st Defendant;
- (d) that between the 2nd June, 1970 and the 29th October, 1970 the said sale was completed and on the 29th October, 1970 the 2nd Defendant as Lessor endorsed its consent on the relevant transfer as required by law. Thereafter all Plaintiff's interest in the said land vested in therein; 20
- (e) that between 29th October, 1970 and the 8th March, 1971 the 2nd Defendant issued a Lease of the said land directly in their name. Such lease was executed on the 8th March, 1971 and was registered on the 8th March, 1971 as Lease No. 13810; 30
- (f) that since the registration of the said lease their title to the said land has the benefit of protection of the provisions of Land (Transfer and Registration) Ordinance Cap.136 and Land Transfer Act 1971;
- (g) that except as herein expressly admitted they deny each and every allegation contained therein. 40
16. THAT they do not know and therefore they deny the allegations contained in paragraph (16) of the Statement of Claim.
17. THAT they do not know and that therefore

they deny the allegations contained in paragraph (17) of the Statement of Claim.

In the  
Supreme Court

18. THAT they do not know and therefore they deny the allegations contained in paragraph (18) of the Statement of Claim.

No.4  
Defence of  
3rd, 4th and  
5th Defendants

19. THAT they repeat their allegations referred to in paragraphs (6 and 15) hereof and deny each and every allegation contained in paragraph (19) of the Statement of Claim.

19th February  
1973

(continued)

10 20. THAT the second Defendant lawfully and properly issued an entirely new lease in their names as Trustees of the Tabia Sanatan Dharam School which said lease has been registered as Lease No. 13810. Except as herein as expressly admitted they deny the allegations contained in paragraph (20) of the Statement of Claim.

20 21. THAT they repeat that the Plaintiff executed a valid and proper Mortgage in favour of the 1st Defendant, that the Plaintiff made default in the payment of the money secured thereunder, that the 1st Defendant lawfully and properly exercised his power of sale and transferred the Plaintiff's interest in the said land to them as Trustees of Tabia Sanatam Dharam School in a lawful manner and that they have always held the said land lawfully as bona fide purchaser for value without notice of the alleged fraud or of any fraud (express or otherwise) whatsoever. Except as herein as expressly admitted they deny each and every allegation contained in paragraph (21) of the Statement of Claim.

30

22. THAT they deny the allegations contained in paragraph (22) of the Statement of Claim.

23. THAT they deny the allegations contained in paragraph (23) of the Statement of Claim.

24. THAT they deny the allegations contained in paragraph (24) of the Statement of Claim.

40 25. THAT they deny the allegations contained in paragraph (25) of the Statement of Claim.

26. THAT they deny the allegations contained in paragraph (26) of the Statement of Claim.

27. THAT they deny the allegations contained in paragraph (27) of the Statement of Claim.



In the  
Supreme Court

No.4  
Defence of  
3rd, 4th and  
5th Defendants

19th February  
1973

(continued)

28. THAT by way of further defence they say that their title to the said land is protected by the provisions of Land (Transfer and Registration) Ordinance 136 and Land Transfer Act 1971.

29. THAT by way of further defence they say that the Plaintiff is estopped from alleging any fraud against any of the Defendants upon the grounds :

- (a) that the Plaintiff was well aware of the provisions of the Mortgage executed by him in favour of the 1st Defendant dated the 2nd day of February, 1968; 10
- (b) that the Plaintiff was well aware that he made default in the payment of the moneys secured under the said Mortgage;
- (c) that the Plaintiff was well aware that the 1st Defendant demanded the payment of such moneys; 20
- (d) that the Plaintiff was well aware that in as much as the Plaintiff made default in the payment of the said moneys, the 1st Defendant was exercising and did in fact exercise his powers of sale under the said Mortgage;
- (e) that the Plaintiff was well aware that the 1st Defendant invited tenders for the said land, that the said land was being and was in fact sold to them; 30
- (f) that notwithstanding these facts the Plaintiff did not proceed to stop the 1st Defendant from exercising his lawful rights either by legal proceedings or otherwise and on the contrary took steps to transfer the said land to some other person fraudulently and with intent to defraud all parties concerned. 40

DELIVERED this 19th day of February, 1973

KOYA AND CO.

Per: Sd. S.M.Koya

Solicitors for the 3rd,  
4th and 5th Defendants

DEFENCE OF 2ND DEFENDANT  
18th October 1973

In the  
Supreme Court

No.5  
Defence of  
2nd Defendant  
18th October  
1973

IN THE SUPREME COURT OF FIJI No.76 of 1971

BETWEEN: CHANDRIKA PRASAD s/o Guddu Lal  
of Tabia, Fiji, Cultivator PLAINTIFF

A N D : 1. GULZARA SINGH s/o Hari Singh  
of Labasa, Moneylender  
2. NATIVE LAND TRUST BOARD  
3. SHIU PRASAD s/o Suchit Bhagat  
as Trustee  
4. BAIJ NATH s/o Hardeo as Trustee  
5. CHANDRIKA PRASAD s/o Halka as  
Trustee all three of Tabia and  
Trustees of Tavia Santan Dharam  
School Committee

10

DEFENDANTS

DEFENCE OF SECOND DEFENDANT

20

1. The Second Defendant denies the allegation contained in Paragraph 1 of the Statement of Claim. Alternatively the Second Defendant states that if the Plaintiff did hold a cane contract after 29th October, 1970 he did so unlawfully.

30

2. The Second Defendant denies the allegations contained in Paragraph 2 of the Statement of Claim and states that if the Plaintiff is at present in occupation of the said land he is there unlawfully and as a trespasser.

3. The Second Defendant denies that it is the owner of the said land as alleged in Paragraph 3 of the Statement of Claim and states that the said land is vested in it under the provisions of the Native Land Trust Board Ordinance (Cap.115).

40

4. The Second Defendant admits Paragraph 4 of the Statement of Claim save that it denies that the Plaintiff is a tenant under the said Ordinance.

5. With regard to paragraph 5 of the Statement of Claim the Second Defendant admits the issue of the said Approval Notice to the Plaintiff but denies all the other allegations contained in the said Paragraph.

In the  
Supreme Court

No.5  
Defence of  
2nd Defendant  
18th October  
1973

(continued)

6. With regard to paragraph 6 of the Statement of Claim the Second Defendant states as follows :-
- (a) That on the 27th day of February, 1968 the Plaintiff applied to the Second Defendant for consent to a Mortgage of his interest in the said land to the First Defendant although at that time the Second Defendant had not issued a lease in respect thereof due to the non-completion of the survey; 10
- (b) That on the 4th day of March, 1968 the Second Defendant gave its consent to the said Mortgage;
- (c) That on the 12th day of June, 1970, the First Defendant as Mortgagee applied to transfer the Plaintiff's interest in the said land to the Tabia Sanatan Dharam School Committee. The lease in respect of the said land had not been issued at this stage; 20
- (d) That on the 28th day of October, 1970 the Second Defendant gave its consent to the transfer referred to in paragraph (c) hereof acting in good faith and in reliance upon information supplied to it on the 23rd October, 1970 by K. Chaukan, Solicitor, of Labasa who stated that the First Defendant had legally exercised his power of sale under the said Mortgage; 30
- (e) For the reasons stated herein a registrable lease was not issued to the Plaintiff. Save as herein expressly admitted the allegations contained in Paragraph 6 of the Statement of Claim are denied. 40
7. The Second Defendant has no knowledge of and therefore denies the allegations contained in Paragraphs 7, 8, 9, 10A, 10B, 10C, 11, 12, 13, 14 and 15 of the Statement of Claim.
8. The Second Defendant admits Paragraphs 16 and 17 of the Statement of Claim and the Second Defendant states that subsequent

to the letters referred to it obtained the assurance referred to in Paragraph 6(d) hereof.

In the  
Supreme Court

No. 5  
Defence of  
2nd Defendant  
18th October  
1973

9. The Second Defendant has no knowledge of and therefore denies Paragraph 18 of the Statement of Claim.

10. The Second Defendant repeats Paragraph 6 hereof and denies each and every allegation contained in Paragraph 19 of the Statement of Claim.

(continued)

11. The Second Defendant admits Paragraph 20 of the Statement of Claim save that it did issue rather than purport to issue the said Lease.

12. As to Paragraphs 21, 22, 23, 24, 25, 26 and 27 of the Statement of Claim the Second Defendant says :

(a) It repeats Paragraphs 1 to 11 hereof;

(b) Save as herein expressly admitted the Second Defendant denies each and every the allegations contained in the said Paragraphs 21, 22, 23, 24, 25, 26 and 27 of the Statement of Claim.

DATED the 18th day of October 1973.

GRAHAME & CO.

Sd.

Solicitors for the  
Second Defendant

To the Plaintiff and/or his Solicitors Messrs.  
Ramrakhas of Marks Street, Suva.

In the  
Supreme Court

No.6  
Proceedings

26th March  
1976

No. 6

PROCEEDINGS  
26th March 1976

IN THE SUPREME COURT OF FIJI AT LABASA

Civil Jurisdiction

Civil Action No. 76 of 1971

Before the Hon. Mr. Justice Williams  
Friday the 26th day of March, 1976 at 9.30 a.m.

Between:

CHANDRIKA PRASAD  
s/o Guddu Lal

Plaintiff

10

- and -

GULZARA SINGH & ORS. Defendants

Mr. K.C.Ramrakha for the Plaintiff  
Mr. A.Kato for the 2nd Defendant  
Mr. S.M.Koya for 1st, 3rd, 4th and 5th  
Defendants.

Mr. Ramrakha:

I have just served notice to produce on  
the defendants.

20

Ask to amend according to documentary  
notice I have just filed.

Mr. Koya:

I was served in hotel yesterday with  
notice to produce. I will try to accommodate.  
I will object to any secondary evidence been  
tendered in lieu of what we fail to produce.

Do no object to the amendments.

Mr. Kato:

No objection to amendments.

30

Mr. Ramrakha:

We have tried between 9.30 a.m. and now  
(10.45 a.m.) to settle, without success.

Mr. Koya:

In the  
Supreme Court

Seems Mr. Chauhan will become a witness.

Preliminary point for trustees defendants 3, 4 and 5. We would ask for solicitor/client costs if we succeed. This is based on the protection afforded under the registration of titles and indefeasibility of title.

No.6  
Proceedings  
26th March  
1976  
(continued)

Order:

10 This item to be considered - if need be -  
at the conclusion.

Plaintiff's Case

Mr. Ramrakha opens.

Plaintiff has been on the land for many years. He was a tenant and as such protected from having his lease terminated except as in accordance with the Ordinance.

Plaintiff gave crop lien and signed mortgage to 1st Defendant.

20 10A of 1st defendant's defence. Plaintiff  
says there was no second mortgage.

Dispute; letter to N.L.T.B., equivocable reply which caused plaintiff to think no consent would be given to the 1st defendant to sell.

N.L.T.B. gave no transfer but granted a fresh lease. Thus the board has not accepted effect of sale; the mortgage should have been registered.

I call 1st witness.

No. 7

30

VIJAYENDRA PARSHU RAM

I am a legal practitioner. Until May 1975 I was a partner in Gibson & Co.

In past 10 years I have acted for plaintiff. I remember this dispute about moneylending transaction.

Mr. Sadik - my firm - demanded of

Plaintiff's  
Evidence

No.7  
Vijayendra  
Parshu Ram  
Examination

26th March  
1976

In the  
Supreme Court

Plaintiff's  
Evidence

No.7  
Vijayendra  
Parshu Ram  
Examination

26th March  
1976

(continued)

Mr. Chauhan that the 1st defendant supply copies of the money lending transaction and the acts.

Mr. Chauhan wrote a letter dated 13/4/70 enclosing some documents. Ex P.1 letter of 13.4.70 and promissory notes and documents listed therein, marked (a) to (p).

Two promissory notes referred to in the letter Ex.P1(a), which are no's 87368 of 1.11.68 and 86362 of 28.5.68 were mislaid by my firm and do not appear in Ex. P.1. 10

I asked Mr. Sadik to write to N.L.T.B. I see a photostat of his letter. I have seen the original. (Ex.P.2. Photostat of letter to N.L.T.B. dated 2.6.70).

I see the reply.

Ex. P.3 Reply of N.L.T.B. dated 24.6.70.

I drew certain conclusions from the letter Ex. P.3 as to the action the N.L.T.B. would take. 20

Cross-  
examination

XXD. Mr. Koya (1st, 3rd, 4th and 5th)  
defendants:

Mr. Sadik had just joined us therefore I knew what he was doing.

In June 1970 no legal proceedings had been instituted against 1st defendant.

I had copies of securities executed in favour of 1st defendant.

By 2.6.70, date of Ex.P.2, I knew 1st defendant had served a demand notice on plaintiff. 30

He was asked for monies due under the mortgage and that on his failure the 1st defendant would exercise his power of sale.

I am referred to a notice of demand to plaintiff.

Ex. D1 Notice of demand to plaintiff dated 10th February 1970.

Q. On 2.6.70 you were in a position to advise plaintiff as to his remedies? 40

A. Yes. He was told he should sue in Supreme Court.

I do not know date that mortgagee's sale was advertised in Fiji Times, but I was aware of it.

See a copy of Fiji Times dated 16.5.70.

Q. You were aware that there was to be a sale?

A. Yes.

10 We wrote to N.L.T.B. because I had become aware of the notice of intended sale appearing in the Fiji Times.

EX.D.2 - Fiji Times dated 16.5.70, containing mortgagee's notice of sale.

Q. On 2.6.70 did you know defendants 3, 4 and 5 had tendered?

A. Not then.

20 Action was not taken in Supreme Court. We ceased soon after to act for Plaintiff in this matter. It was plaintiff's decision. I cannot say when this was. I think it was in 1970.

I understood Mr. Ramrakha was being consulted.

The plaintiff was aware that the property was being sold by the mortgagee.

XXD. Defendant 2: Nil

Re-X: Nil

Sgd. J.T.Williams  
Judge

By consent:

30 Promissory notes marked (q) and (r) as part of Ex. P.1.

Lease:

Ex. P. 4 - Lease, dated 8.3.71, No. 13810.

Sgd. J.T.Williams  
Judge

In the  
Supreme Court

Plaintiff's  
Evidence

No.7

Vijayendra  
Parshu Ram  
Cross-  
examination

26th March  
1976

(continued)



In the  
Supreme Court

Plaintiff's  
Evidence

No.8  
Chandrika Prasad  
Examination  
26th March 1976

No. 8

CHANDRIKA PRASAD

P.W.2 - CHANDRIKA PRASAD, Sworn in Hindi

I am a bus driver and a cultivator. I am 38 years. I see my cane contract.

Ex. P.5 - Cane Contract.

Prior to this I did not have a cane contract.

I have grown cane 1949/50. My father cultivated cane on this land before that.

10

I have lived on this land for 25-30 years.

In 1969 the N.L.T.B. agreed to give me lease for 30 years as from 1965.

I see the provisional approval and permit to occupy.

I paid £282 as rent on 27.2.68 and £52.00 survey fees.

Ex. P.6, Provisional approval, permit, and two receipts marked (a), (b), (c) and (d).

20

Also grow rice and vegetables. I have a home on the land. It is predominantly a farm.

The N.L.T.B. has granted me no other leases.

From 1964 I borrowed from defendant No.1. Mr. Chauhan was his solicitor who prepared the documents for signature and witnessed handing over of the money.

I see the documents now in Ex. P.1. On 18.4.64 on promissory note P.1 Ex. (f) I received \$78 in front of the solicitor. When we got outside he took back \$24.00 saying it was interest. We had arranged this before seeing the solicitor.

30

29.4.64 promissory note P.1 (g) \$50.00 under the same arrangement I gave him back \$10.00.

N.B.

By consent plaintiff is led as follows:

I have seen para.9 of Statement of Claim. It shows pattern of the dealings. The transactions were arranged as I have outlined above.

At one stage some of the transactions were arranged before a J.P.

At that period I was in financial difficulties.

10 On 5.7.67 I executed crop lien in defendant 1's favour.

I also executed a mortgage in defendant 1's favour on 15.11.67.

On the next day I paid £100 to B.P.Ltd.

I never signed mortgage in 1968. I only signed one mortgage.

On 22.2.68 I borrowed from the defendant No.1. I signed a promissory note.

20 I see mortgage (o) dated February 1968. I did not sign it. I did not get the memorandum (n).

Mr. Ramrakha:

At this stage I ask to see the moneylenders' books of account.

Notice was given to Mr. Chauhan.

Mr. Koya:

We received the notice on Monday last at Suva. Time too short.

30 I received a demand from defendant No.1 threatening to sell my lease. I consulted Mr. Ram, P.W.1. He wrote to N.L.T.B. on my behalf.

In March 1971 I issued my writ.

I did not issue it prior to 25.3.71 because of the reply of the N.L.T.B. that they had noted Mr. Ram's letter. It took time for me to raise money. Then I went to Suva and instructed my solicitor. In the meantime my land was sold.

In the  
Supreme Court

Plaintiff's  
Evidence

No.8  
Chandrika  
Prasad  
Examination

26th March  
1976

(continued)

In the  
Supreme Court

Plaintiff's  
Evidence

No.8  
Chandrika  
Prasad  
Examination  
26th March  
1976

(continued)

I see my advocate's letter to N.L.T.B.

Ex. P.7 Letter to Board.

N.L.T.B.'s reply -

Ex. P.8 - Letter from Board to Plaintiff.

Defendants 3, 4 and 5 bought the land as trustees of the school. I am on its committee. I have contributed to their building fund and pay fees for my children.

Ex. P.9 - Receipts - school fees etc.

There was never any resolution from the committee authorising trustees to purchase this lease. 10

I claim the relief prayed for.

Cross-  
examination

XXD. Mr. Koya (defendants 1, 3, 4 and 5):

Q. Can read and write in English?

A. No. I was educated class 4/5. I cannot do arithmetic in English.

Q. \$78 less \$54.00 = what?

A. After some pause - \$24.00.

Q. In those transactions solicitor Chauhan acted for you and defendant No.1? 20

A. Yes.

Q. The arrangement to refund part of monies loaned was not known to the solicitor or the J.P.?

A. I agree.

Items (1) to (15) para.9 of Statement of Claim show an arrangement independent of what is revealed on the documents.

Q. Do you say those monies should be refunded to you? 30

A. -

(Court - This question is not related to the pleadings in any way).

Q. Until 1970 you had never complained about

those transactions?

A. That is so.

The crop lien was to enable defendant 1 to collect monies directly from the C.S.R. I see the lien 5.7.67 Ex..P.1.

There was nothing wrong with the crop lien.

Nov. There was only one mortgage it was in 1967

Q. Did you get a copy of it?

10 A. No.

The mortgage was for \$300.

Q. You say only \$250 was loaned?

A. He took back \$50.00.

I am referred to documents which contain my name - my purported signatures. They have my proper signature.

I signed before Mr. Chauhan (solicitor). The defendant 1 was present.

20 I did not receive a copy of it. It indicates sums of money totalling £904.00.

(N.B. - Purported mortgage deed.)

I was not told of this.

Q. On that day 16.11.67 £250.00 was loaned to you?

A. I agree I got the £250.00 but no one mentioned the other sums. I see a document. It bears my signature.

(N.B. Purported memo of contract of loan).

30 Ex.D4 - Purported mortgage of 16.11.67.  
Ex.D3 - Purported memo of contract of loan of 16.11.67.

Q. On 16.11.67 you wrote to N.L.T.B. to consent to this mortgage?

A. No.

In the  
Supreme Court  
Plaintiff's  
Evidence

No.8  
Chandrika  
Prasad  
Cross-  
examination  
26th March  
1976

(continued)

In the  
Supreme Court  
Plaintiff's  
Evidence

No.8  
Chandrika  
Prasad  
Cross-  
examination

26th March  
1976

(continued)

I see a letter to N.L.T.B. It has my signature. I was not aware it was asking for consent to a mortgage. No one explained it to me. Mr. Chauhan's clerk, Ram Rattan was there.

Q. You signed instructions to Mr. Chauhan to prepare the mortgage?

A. I signed. But I do not know what it was.

I see a document. It has my signature. Mr. Ram Rattan's name is on it.

Ex. D5 - Purported application for contract addressed to N.L.T.B. 10

Ex. D6 - Instructions to solicitor to prepare mortgage.

Ex.D5 and D6 do bear my signature. The purported witness to them is Ram Rattan. He saw me sign. He did not explain any of these documents to me.

1.00 p.m.

Sgd. J.T.Williams  
Judge

20

Adjourned to 2.30 p.m.

2.30 p.m.

Court as above

P.W.2 - XXN. continued:

I did not receive from Mr. Chauhan on 10.2.70, a notice demanding re payment - Ex.D1.

(Ex.D is explained to the plaintiff by the interpreter)

If I did receive the notice I do not remember it.

30

I went to Parshuram's office in March 1970 and gave him instructions. Although I engaged Parshuram I do not know what letters he wrote.

I am referred to a letter of 17.3.70. I asked Parshuram to get copies of documents from Chauhan & Co.

Ex. D.7 - Letter dated 17.3.70 to Chauhan.

Q. As a result Mr. Chauhan sent copies of promissory notes, mortgage etc?

A. Yes.

Q. They included memo contract Feb. 1968 and mortgage 22.2.68?

A. I do not remember getting the memo of contract and the mortgage. I only remember signing one mortgage.

10 Q. Did you not receive it by your solicitor in April 1970?

A. I do not know what documents we received but my solicitor would know.

I am referred to 10B(a) of my Statement of Claim, but I cannot recollect this now.

I am not sufficiently educated to know all the documents.

Ex.P.1, letter 13.4.70, asked for repayment. My counsel received documents.

20 Q. Your solicitor warned you to pay or defendant 1 would sell you out?

A. Yes.

Q. You took no Supreme Court action straight away?

A. I left it with my solicitor.

Q. Did you instruct your solicitor to take legal proceedings then?

A. I did not. I told him to investigate. I am referred to Fiji Times, Ex. D2.

30 Q. Was your attention drawn to the tenders for your property?

A. Yes - by those who can read papers. I was worried.

Q. The closing date for tenders was 30.5.70?

A. Friends who read papers told me. I have a brother- Satya Prasad.

In 1969 I was indebted to defendant 1 under

In the  
Supreme Court  
Plaintiff's  
Evidence

No.8  
Chandrika  
Prasad  
Cross-  
examination  
26th March  
1976  
(continued)

In the  
Supreme Court

Plaintiff's  
Evidence

No.8  
Chandrika  
Prasad  
Cross-  
examination  
26th March  
1976

(continued)

the mortgage.

Q. You applied to N.L.T.B. to transfer this lease to your brother Satya Prasad for natural love and affection?

A. Yes. The N.L.T.B. refused this. I did not mention this to defendant 1 or his solicitor.

On 10.9.69 I applied to transfer to Satya Prasad for \$4000.00. I did not tell defendant 1 or his solicitor of this.

On 7.7.69 I sent in a transfer in favour of Satya Prasad to sell this lease without telling defendant 1 or Chauhan his solicitor. 10

Those documents were done by a J.P. not by a solicitor.

Q. Because you were being secretive?

A. No. I wanted to get money to pay my debts.

On 17.9.69 the defendant 1 was pressing me for money.

Q. He was concerned because you would not renew the crop lien? 20

A. That that stage I wanted an account of the money paid to him under the crop lien. He did not supply it. Therefore I would not renew until I knew what the balance was so that I could pay it off.

On 17.9.69 I would have found a way.

When lien expired I think I once collected some money.

Q. You never collected a cent after its expiry? 30

A. Do not remember.

I am referred to a letter from Mr. Chauhan. A notice for payment.

N.B. - Admitted by Mr. Ramrakha.

Ex. D.7A Letter of 17.9.69 from Chauhan for defendant 1 to plaintiff.

Q. On 19.9.69 you signed a paper before Mr. Chauhan's clerk - Kalika Prasad?

A. In respect of what. I see a letter. It has my signature.

N.B. Read out and interpreted to P.W.2 (plaintiff)

Prasad did not read this out to me; there were many documents which I signed and which were not read out to me. I simply signed when I was asked to sign.

10 (Tendered - Ex.D8 Letter dated 19.9.69 from plaintiff's solicitor to defendant No.1)

Q. On 22.2.68 did you go to office of Mr. Chauhan?

A. Maybe.

Q. Did you there sign a document?

A. I see my signature on it. It is dated 22.2.68.

(Ex.D9 (Tender). Instructions to solicitor Mr. Chauhan signed by defendant 1).

20 Ex.D9 was not explained to me. I am referred to an application to N.L.T.B. to deal with the lease.

I see my signature on such a form.

Tender - Ex.D.10 - application form undated.

Ex.D10 was not explained to me.

I see my signature to a document dated 22.2.68. It is a memo of moneylending contract.

Tender - Ex.D11 - Moneylending memo dated 22.2.68.

30 The Ex. D.11 is signed by me in two places. I do not know what it was about. It was not explained to me.

I still say that on 22.2.68 I did not sign a mortgage in favour of defendant 1. If I did I do not know what it was.

I was a witness in Civ. Action 227/68 Magistrate's Court, Labasa, in which defendant 1 was plaintiff and I was defendant.

I gave evidence on oath. In my evidence I

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(continued)



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(continued)

said I had received the summons to appear  
in the action. I owed the money.

I maintain I did not receive the  
summons.

I was charged for perjury alternate  
with giving false information to a public  
servant.

I am referred to police summons.

I pleaded guilty to giving the false  
information - the alternate charge. I was  
convicted and fined £12.10.0 and bound over  
for 12 months.

10

Q. On 5.10.68 you forged your brother's  
cheque and were charged in Labasa?

A. Yes. I was convicted. I had pleaded  
guilty. I was fined \$100.00 in February 1969.  
I am referred to mortgage dated 22.2.68. I  
am referred to my signature thereon. There  
are initials "C.P." in some places. The  
mortgage bears my signature.

20

Tender - Ex.D12 - Mortgage dated 22.2.68.

Q. On 22.2.68 you received £463.9.0 as a  
loan?

A. I received it but I do not remember the  
details.

Q. Why do your pleadings repudiate that loan?

A. I signed so many documents - I can't  
remember dates, contents and details of loan.

Q. In February 1968 you had car L53?

A. Yes.

30

Q. You owed money to B.P. under Bill of Sale?

A. Yes.

Q. You were in arrears.

A. Yes.

Q. They were going to sieze car?

A. Yes.

Q. You borrowed money from defendant 1?

A. Yes.

Chauhan helped. I got the £463.9.0 - I do not know if this was the amount. I cleared the Bill of Sale. I also used it to meet arrears of rent to N.L.T.B.

I am referred to item 13 of my Statement of Claim as amended. It refers to 22.2.68 and a document for \$926.90 as allegedly loaned and that the amount actually loaned was nil.

10 Q. Did you sign a document on 22.2.68 for that sum and yet receive nothing?

A. I cannot remember - I signed documents.

I borrowed on a promissory note. I do not remember whether I received it or not.

Q. Ever sign promissory note and get nothing?

A. If interest was overdue I used to sign a promissory note for the interest and then when we came out of the solicitor's I would hand all that money back.

20 I am referred to paragraph 9 of Statement of Claim item 13 as amended which shows I only got \$100 out of \$926.

My amendment thereto filed today says I got nil out of the \$926.

I cannot remember the details now. I am referred to the amendment to my pleading filed this morning. It is correct - I kept some of the \$926.00.

30 I am referred to the amendment to my Statement of Claim para.9, by item 8A. I remember refunding \$250 out of the money loaned. It was 5.7.67 according to the documents.

I was in need of money. He took the interest.

Q. In July, 1967 you signed a documentary mortgage?

A. I signed many documents. I do not now know what they were.

40 I went to N.L.T.B., Suva in 1969. I spoke to Secretary.

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Plaintiff's  
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Chandrika  
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(continued)

In the  
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Plaintiff's  
Evidence

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(continued)

I do not know if Secretary received  
phone call.

Q. Secretary said telegram had come from  
Mr. Chauhan saying you were trying to defeat  
creditor - 1st defendant?

A. No. He simply told me to pay the arrears  
and leave the application with him. I did so.

The crop lien was for £684 on 5th July  
1967.

Q. On that day you signed a document for 10  
\$580?

A. Do not know.

Q. Your amended Statement of Claim mentions  
\$580.00.

A. Cannot remember the details.

I heard defendants 3, 4 and 5 had put in  
a tender. From March 1970 to March 1971 I  
took no legal action to prevent a sale by  
defendant No.1.

The advertisement was in May 1970 - and 20  
I told Messrs. Gibson & Co. to write to  
N.L.T.B.

I had not the money to start an action.

I knew defendant 1 was purporting to sell  
under a mortgage.

Mr. Chauhan, 22.3.71 sent to me a letter  
and a cheque and some papers.

(Ex.D.13 - Above letter, cheque and papers  
from solicitor Mr. Chauhan to plaintiff)

Q. The fresh lease was registered before you 30  
started these proceedings?

A. Yes.

XXD. Defendant 2:

Q. In 1969 your brother offered £4000.00 for  
the land?

A. Yes.

Q. You did not try to borrow the £4000.00 to  
pay off the land?

A. No.

He said he would give me the money if N.L.T.B. agreed.

Re-Exd:

Q. The lease is said to start

Mr. Koya: The terms of the lease are not opened up.

Mr. Ramrakha:

10 The word "fresh" was used in relation to the lease.

Therefore I am entitled to ask whether or not the witness knows if it was a fresh lease or not.

Court: The witness can clearly be asked if he knows whether or not it is a fresh lease - for what purpose such a question serves.

Re-Exn:

I do not know about the fresh lease.

The N.L.T.B. give me promise of a lease.

20 I do not know how a "fresh lease" came to be issued to defendants 3, 4 and 5.

My counsel who advised me to plead guilty was Mr. Chauhan - to the false information.

I pleaded guilty to the cheque forgery - Mr. Chauhan was my counsel.

Sgd. J.T. Williams  
Judge

Close of plaintiff's case.

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(continued)

Re-examination

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No. 9

CHANDRIKA PRASAD

No.9  
Chandrika  
Prasad  
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D.W.1. (Deft. No.1) 3, 4 and 5)  
CHANDRIKA PRASAD, Sworn, Hindi

I reside in Labasa.

I was a clerk in the office of Chauhan,  
solicitors when he was in Labasa.

I dealt with clients, typed and took  
instructions.

I know the plaintiff. Have known him for 10  
12 years. I am familiar with his signature.  
I have seen him sign documents.

Ex. D9 bears my signature and that of  
the plaintiff.

There are instructions to confirm. I  
explained the contents of Ex.D.9 to him in  
Hindi, his language before he signed them.  
I had handed the document to him.

Plaintiff can read English. I know this  
from my dealings with him. 20

I see Ex. D.8. It has signatures of  
plaintiff. I typed it. Ex.D8 was read to  
plaintiff in Hindi before he signed it. He  
made no comment; he raised no objection to  
it.

XXD. Defendant 2: Nil.

Cross-  
examination

XXD. Plaintiff:

We did not have defendant 1's books of  
account, but he brought them into our office  
when he did any transaction.

The figures £1397.9.0 were not taken from 30  
the money-lender's books. I got from  
"security documents".

The figures shown in Ex.D9 were extracted  
from the documents mentioned in Ex. D9.

Sgd. J.T. Williams  
Judge

N.B. Some mistake may have been made in time

this hearing would take.

Accordingly it is adjourned to a date between 31st March and 2nd April.

Sgd. J.T.Williams  
Judge

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Chandrika  
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examination  
27th March  
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(continued)

No. 10

PROCEEDINGS - 13th  
December 1976

No.10  
Proceedings  
13th December  
1976

10

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

Civil Jurisdiction

Action No. 76 of 1971

Before the Hon. Mr. Justice Williams  
Monday the 13th day of December, 1976 at 10.00 a.m.

BETWEEN: CHANDRIKA PRASAD s/o Guddu Lal  
Plaintiff

A N D : GULZARA SINGH & ORS.  
s/o Hari Singh Defendants

20

Mr. Ramrakha Counsel for the Plaintiff  
Mr. Koya Counsel for the Defendants.  
(Chauhan & Co.)  
Mr. Kato - N.L.T.B. (2nd defendant)

Mr. Ramrakha:

Apologise for delay in arranging for this hearing.

Mr. Koya:

I close the Defence Case for my clients.

Mr. Kato: I am not calling evidence from

In the  
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13th December  
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(continued)

N.L.T.B. (2nd Defendant).

Mr. Koya: Onus is on plaintiff we are relying on a purported title - defendants 3, 4 and 5. The plaintiff challenges it and he should begin.

Section 42 L.T.A. - (a) to (e) does not help plaintiff.

Ramrakha:

Onus does not affect who starts. Order depends on whether witnesses have been called.

Koya: I will address first.

10

Order accordingly

Koya for defendants 3, 4 and 5 at this stage.

N.L.T.B. issued the lease. This dealing is protected under L.T.A. Chandrika Prasad (plaintiff) held under an approval notice. He borrowed money under it. Mortgage documents were put in. When plaintiff could not pay the mortgagee sold. The documentary evidence shows that plaintiff never objected to the sale on any ground of irregularity or fraud. He had every opportunity to stop the sale.

20

There is now an issue of a registered lease. Defendants 3, 4 and 5 are not concerned with any irregularity between plaintiff and mortgagee.

Privy Council has held that once the land is under Torrens system Frasee & Walker - there was a forgery of a mortgage. Mortgagee sold to a 3rd party. It was freehold land. The victim of the forgery sued - at common law he would have succeeded.

30

Sutton O'bane - easement not on title was lost.

Sections 37(1) L.T.A. 39 and 40.

S.41.

S. 42 is a complete answer to the plaintiff's case.

Sections 139, 140, 141  
Regarding the moneylending the defendant alleges 40

a mortgage as defined by L.T.A. S.2.

Court cannot go behind the title unless there are allegations of fraud made and substantiated against any of the defendants - no proof of any sought here. S.63 - 74 - mortgages.

Part VIII L.P.A. S. defines mortgage. This mortgage was not registered but was capable of registration.

10 S.3 (2) 18/71 (Property Law)  
S.67 - 88 - mortgages Cap. 18/71.

Power of sale sections 77 and 79. Defendant Gulzara Singh had a mortgage which was reasonable.

Submit plaintiff has made out no case.

20 Dealing briefly with evidence of plaintiff. He says that he was charged excessive interest and at times no money was passed. In XXn he was poor. The clerk's evidence was not challenged and therefore should be accepted.

Mr. Kato - N.L.T.B.

Do not understand why we were brought in. At Labasa I agreed to tender "the transfer document", - from mortgagee to school committee - it is mentioned in Ex. D.8. Now I wish to tender the transfer document.

Mr. Ramrakha:

30 I object to this document being put in. The N.L.T.B. at Labasa had anticipated giving evidence when we last adjourned. Cases are now closed.

Mr. Koya: We have been very inactive. This document is not prejudicial. Not trying to "ship" this document in. Mr. Kato thought it was in. It was referred to in the pleadings. This land was not registered at that time.

40 Para. 20 S.C. - my complaint is that this was not transferred. I could not have agreed to it going in by consent.

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(continued)



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(continued)

Order:

I cannot at this stage see how this document can go in, in the face of the dispute as to whether there was consent.

The defendants have not only closed cases but have closed their addresses.

(Sgd) J.T.Williams  
JUDGE

Mr. Ramrakha:

I tender a list of propositions setting out the issues. 10

In this case - there is a plethora of allegations in defences which has not been proved.

No objection to N.L.T.B. before the lease was issued to School Committee - see paras. 16, 17 and 18 of Statement of Claim, but pleading N.L.T.B. at p.18 - para. 8 refers to 6(d) of its defence. The N.L.T.B. admits there was a protest and after the protest decided to issue a lease. No evidence that any consideration. 20

Plaintiff was tenant under L.T. Agricultural Ordinance. Nothing to show he was deposed of it.

My case is essentially that he is still a tenant of N.L.T.B. under Landlord & Agricultural Ordinance - prayer of Statement of Claim.

N.L.T.B. has issued a second lease to the defendants. 30

Para. 4 - Statement of Claim.

Both Statements of Defence admits leases is under ALTO.

Plaintiff's character has been attacked but he cannot be denied justice.

N.L.T.B. issued approval notice to him. Plaintiff can only be directed under provisions of ALTO, bad husbandry, non-payment rent - or a valid transfer. 40

There is no proof of a valid transfer - how they came to be registered is a mystery.

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Supreme Court

Prop.2 - Somar Raju - Bhajan Lal  
Civ. App. 48/76 - one who takes a transfer and becomes registered proprietor cannot defeat rights of one holding under ALTO.

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Prop.3 - two leases.

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Prop.4 -

(continued)

10 Prop.5 - Land Transfer and Registration Ord. which applies is the old one. This transfer goes back to the old Ordinance.

The Property Law Act came into force on 1.8.71 but writ was issued before this therefore it has to look at the old existing law.

Mortgage Ex. D.12 is not registered - common ground. It was not capable of being registered because there was not a registrable lease.

S.25 old Land Transfer Act.

20 1st Edn. Ballman - Torrens - p.249 - unregistered mortgages.....".....only a registered mortgagee can exercise power of sale .....2nd Edn.326 para. 392 "Who may sell" - "only registered mortgagee can sell..."

30 Therefore the moneylender had no right to sell - Mr. Chauhan acted for the moneylender and other defendants - This deposes of the whole case. The approval notice is proof that he is recognised as an Agricultural Tenant - 30 years from 1965 - an approval notice did not give an enforceable right to a lease - (but it does under ALTO). An approval notice could not be mortgaged therefore no right to sell vested in the moneylender.

Prop.7 - N.L.T.B. did not purport to transfer the lease - but has granted a fresh competency lease.

40 Para. 7 of the Statement of Claim - unlicensed moneylender and Para.8 of Statement of Defence admits it was not paid. S.15 Money-lending Ordinance - contract not enforceable. Contract in 1967.

Ex. D4 P.13 pleadings 10A

Ex. D12 If one document is given in substitution for another then this should be recited.

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(continued)

S.16 Moneylending Ordinance - 16(3) Failure  
in D.12 to recite reference to Ex.D4 does  
not recite all terms and conditions, Tota Ram  
v. Nasiban 8 F.L.R. 29 - Second security.

Submit plaintiff is still tenant under  
ALTO.

Ask injunction.

Sgd. J.T. Williams  
Judge

Mr. Koya: 0.35 r.7 reply - 10

Ramrakha not objecting. We have put in a  
certified copy of the lease which was issued -  
Ex.P.4. Whether plaintiff relies on old or  
new Land Transfer Act - the lease speaks for  
itself. Old Cap. 136 S.14.

Plaintiff emphasises ALTO - but it does  
not refer to mortgagor's and mortgagee's rights  
- only lessor and lessee. This was not a  
termination of lease with which ALTO is  
concerned. 20

S.9 ALTO - refers to mortgage being  
creatable.

S.36 - does not prevent mortgagee from  
purchasing.

1971 Prop. A applies to all land - S.3.  
The mortgage itself confers the right to sell.

Although there is no evidence of the  
actual transfer the defendant has produced  
letter from N.L.T.B. 19.3.71 - refers to  
mortgage - plaintiff has produced this very  
letter and he is bound by it. 30

N.L.T.B. does not do the transferring -  
it is the tenant not the landlord who transfers.

There are not 2 leases - only one. S.29  
old Land Transfer Act, S.19 - definition of  
mortgage is very wide.

Registered property and unregistered  
property differ under old ordinance.

Mr. Kato: Plaintiff has not come with clean  
hands. 40

Mr. Ramrakha: Agreed correspondence is not admission of the facts in the correspondence.

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Defendants'  
Evidence

Sgd. J.T.Williams

Order:

Judgment deferred to a date to be notified.

Sgd. J.T.Williams

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(continued)

9.2.77 - 9.30 a.m.

Mr. B.C.Patel - plaintiff  
Mr. Anand - defendant for Koya & Co.

10 Judgment delivered by handing down.

Sgd. J.T.Williams  
Judge

No. 11

JUDGMENT - 9th  
February 1977

No.11  
Judgment  
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1977

IN THE SUPREME COURT OF FIJI AT LABASA

A Civil Jurisdiction

Action No.76 of 1976

Between: CHANDRIKA PRASAD Plaintiff

20 A n d : 1. GULZARA SINGH  
2. NATIVE LAND TRUST BOARD  
3. SHIU PRASAD  
4. BAIJ NATH  
5. CHANDRIKA PRASAD Defendants

Mr. K.C.Ramrakha, Counsel for the Plaintiff  
Mr. A. Kato, Counsel for the 2nd Defendant  
Mr. S.M. Koya for 1st, 3rd, 4th & 5th Defendants.

JUDGMENT

30 The plaintiff who held a provisional approval for a native lease, in Labasa, mortgaged his interest under the approval to a money lender. Payments due under the mortgage fell into arrears and the mortgagee, (defendant 1), sold the plaintiff's

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No.11  
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(continued)

interest to the 3rd, 4th & 5th Defendants  
as trustees of Tabia Sanatan School.

In a lengthy Statement of Claim (7 typed  
pages) the plaintiff made no reference to the  
creation of a mortgage or to any of its terms.  
In para. 10B he refers to its existence for  
the first time in the following way,

"As to the alleged mortgage deed the  
plaintiff says....."

and then sets out several objections to its  
validity. 10

Para. 9 of the Statement of Claim gives  
particulars of numerous loan transactions  
continuing over several years between the  
plaintiff and the mortgagee, (defendant 1),  
and alleges in para.10A that they are false  
and fraudulent. Fifteen transactions are  
enumerated between 28/4/64 and 1/11/68  
stating the amount falsely alleged to have  
been loaned and the amount actually received. 20  
In evidence the plaintiff stated that although  
most of the transactions were effected and  
the proper amount handed over in a solicitor's  
office, once they were outside the defendant 1  
took back some of the money. On the hearing  
day the plaintiff made several minor amend-  
ments to his Statement of Claim, typed on a  
separate sheet and which I have attached to  
the Statement of Claim. The thirteenth item  
in the loan transactions of para.9 originally 30  
showed \$926 as the false amount and \$100 as  
the actual loan; the amendment reveals a false  
loan of \$926 on 22/2/68, (the date of the  
mortgage), but alleges that nothing was  
received by the plaintiff. An additional loan  
is added to the list as No.8A of 5/7/67; it  
reveals a purported loan of \$580.00 but alleges  
that the actual loan was \$300.

Regarding the \$926.00 loan dated 22/2/68  
(supra) which the amended Statement of Claim 40  
alleges is completely false the plaintiff  
said in cross-examination that he could not  
remember if he ever signed a money lending  
memorandum without receiving a loan. That  
reply directly contradicts his amended  
Statement of Claim. Ex. D11 is a money lending  
memorandum dated 22/2/68 which the plaintiff  
admitted signing in two places. It refers to  
the total outstanding debt and acknowledges an  
immediate further loan of £463.9s. (\$926) 50

making a total debt of £1397.9s.0d. and contains the plaintiff's promise to grant a mortgage to cover it all. Ex.D12 'the mortgage' is also dated 22nd February 1968, and recites the loans referred to in Ex. D11. Moreover Ex.D9, also dated 22/2/68 and signed by the plaintiff instructs his solicitor Mr. Chauhan to prepare the mortgage Ex.D12, and Ex.D9 also recites the outstanding loans and the plaintiff's total indebtedness referred to in Ex.D11 and Ex.D12. Those three documents dated 22nd February, 1968, refer to a loan of \$926 and the plaintiff signed all of them. I would be surprised if he did not receive the \$926.

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(continued)

10

20

In cross-examination he admitted using the borrowed money to pay the arrears of rent to the N.L.T.B. and his own Ex.P6(c) is a receipt dated 27/2/68 from the N.L.T.B. (2nd defendant) for £282.00 rent. He admitted owing Burns Philp Limited on a Bill of Sale in respect of his car which they were going to seize in February, 1968 and that he paid it out of the \$926.

I have no doubt whatever that in regard to the loan of \$926.00 the plaintiff was deliberately lying when he said he had received nothing and I find that his Statement of Claim was false in that respect.

30

Turning now to the item 8A; a loan of \$580 allegedly made on 5/7/67 the Statement of Claim alleges that only \$350 was received. The money lending memorandum is Ex.P.1(i) (put in by the plaintiff) is accompanied by a crop lien Ex.P.1(j) also dated 5/7/67 which acknowledges an immediate loan of £290.00 When cross-examined about that transaction the plaintiff said he could not remember the details. I regard the plaintiff as deliberately untruthful.

40

Loan No.15 mentioned in para.9 of the Statement of Claim mentions \$106 as a false amount and the plaintiff says it was only \$80.00. The date of that loan is 1/11/68 and it ties in with Ex.P.6(d) a receipt also dated 1/11/68 for survey fees of \$104 paid by the plaintiff to the N.L.T.B. I find that loan was for \$106, that the plaintiff received it and used it to pay the survey fees.

50

I do not believe the plaintiff's allegations that he did not receive the monies set out in

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(continued)

each memorandum of the money lending transactions. I do not accept the plaintiff's allegation that the documents were not read over and explained to him. I do not believe his assertions that he did not receive copies of the memorandum of each loan.

Para.10A(e) of the Statement of Claim alleges that the defendant 1 was not a licensed money lender. No evidence has been put forward to suggest that he never had a licence. By S.6(1) of the Money Lender's Ordinance, Cap.210, the Registrar is obliged to publish in the Gazette a list of money lenders. By S.6(2) absence of a person's name from the list is evidence that that person is not a money lender unless the contrary is shown. The plaintiff has not referred to any such list and it would have been simple matter to do so, but the Statement of Defence agrees that in 1967 he had failed to pay the fees for the renewal of his money lending licence. It seems from the Statement of Defence that a clerk entrusted with the licence money appropriated it and that in 1968 the defendant No.1 made good the payment for 1967 when paying for 1968; no evidence was led by defendant 1 in support of that portion of his pleadings. Pleadings are not an avenue for evidence and the only way in which I can interpret para.7(a) of the Statement of Defence is as a denial that he was an unlicensed money lender at the material time on the ground that he had been permitted to rectify his clerk's dishonesty. In other words he did not receive a licence in 1967 but in 1968 he paid a double fee to cover him for 1967 and 1968.

For reasons which appear later, I am satisfied that the mortgage was created on February 1968. The plaintiff has not tendered a copy of the gazetted list of money lenders for 1968 and there is no evidence that the defendant 1's name does not appear upon it. There is no evidence to show prima facie, under S.6(2), that the defendant 1 was not a licensed money lender in 1968.

Para.18 of the Statement of Claim says that the defendant No.1, on request, refused to supply accounts of the money lending transactions. That is a vague and inadequate allegation in the circumstances of this case. The transactions between the plaintiff and defendant 1 continued from early in 1964 to

November 1968 or thereabouts. It is essential for the plaintiff to indicate when he asked for particulars so that one can judge whether the particulars supplied by defendant 1 covered all transactions to date. P.W.1 Mr. V.P.Ram, a lawyer, whose firm acted for the plaintiff, says that they asked for copies of the money lending contracts and accounts. He stated that documents listed in Ex.P.1(a) dated 13/4/70 were received from defendant 1's solicitors, and that two promissory notes mentioned therein were mislaid by his firm. The documents Exs. P.1(i) to (j) show a total borrowing on promissory notes amounting to £394.0s.0d. which is set out in a crop lien Ex.P.1(j) which the plaintiff executed in defendant 1's favour and which acknowledges a further loan of £290 making a total of £684.00 covered by the crop lien as at 4/7/67. However, the contract Ex.P(i) preceding the lien and the lien Ex.P(j) itself which are both dated 5th July 1967 do not show any sums for interest nor any repayments. According to a record of the money lending transactions Ex.P.1(p) no repayments were made by the plaintiff during the period up to 4/7/67. Then three promissory notes were signed by the plaintiff, Exs.P.1(k), P.1(l) and P.1(m) amounting to £100. They are mentioned in a further money lending contract Ex.P.1(n), dated 22/2/68, under which the plaintiff borrowed a further £463.9s.0d and agreed to create a mortgage. Ex.P.1(n) refers to £150 loaned to plaintiff on 16/11/67 but this is not supported by any pro-note or other money lending memorandum. The £150 loan is referred to in the mortgage Ex.P.1(o) of 22/2/68, and in the defendant's exhibits appears a contract Ex.D3 dated 16/11/67 which sets out a principal sum of £754 and which acknowledges an advance of the aforesaid £150 making a total of £904 owing by the plaintiff.

As I have already said on 22nd February 1968 a further £463.9s. was advanced to the plaintiff under money lending contract Ex.D11 which contains the plaintiff's promise to create a form of mortgage to cover the total indebtedness of £1397.9s. Ex.D12 is the mortgage and it recites how the total indebtedness has built up to £1397.9s. from £684.0s.

Apart from the foregoing documents the defendant 1 supplied a statement of account Ex.P.1(p) dated 10.4.70. It purports to follow the form required by S.19 of Cap.210 as set out

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in the First Schedule to the Ordinance. My examination of the memoranda of the loan transactions and the account supplied by the defendant No.1 indicate that the plaintiff and his legal advisers received from defendant No.1 all the information they could have required for the purpose of querying any or all of the money lending transactions and the mortgage held in relation thereto.

The plaintiff was a poor witness. Apart from his admissions in cross-examination of convictions for giving false information to the police and being fined therefore, and for forging a cheque and being fined £100 he was clearly a consummate liar. I would not accept his uncorroborated evidence as being in any way dependable if it were challenged. 10

I find that his allegations of fraud, cheating and so forth are baseless and that the money lending transactions were fair. 20

However, Mr. Ramrakha withdrew all allegations of fraud and in his final address based his claim on the grounds among others that the approval notice from the N.L.T.B. vested no rights in the plaintiff; that since the mortgage was not registered, and was not capable of registration no right could be acquired under it by the mortgagee (defendant 1). He contended that the plaintiff did not hold a registrable lease and consequently he had no interest which was capable of being included in a registrable mortgage. 30

It will be useful to describe the mortgage transaction and subsequent sale.

Para.10B of the Statement of Claim alleges that the mortgage was created on 10/11/67 and not on 22/2/68. There are two documents evidencing mortgage transactions; one for £904 is dated 10/11/67 and one for £1397.9s. is dated 22/2/68. The plaintiff put in Ex.P.1(o), a copy mortgage dated 22/2/68 for £1397.9s.0d. and the original Ex.D.12 put in by the defendant bears the N.L.T.B. consent to the mortgage, impressed duty stamps, and the number 29468. In addition Ex. D9 dated 22/2/68 is the plaintiff's letter to Mr. Chauhan, solicitor, instructing him to prepare a mortgage in favour of defendant 1. 40

The document of 16/11/67 bears no stamps and no NLTB approval. 50

10 A money lender's memorandum of contract Ex.D3 dated 16/11/67 signed by the plaintiff reveals the latter's total indebtedness as £904, and that he is borrowing a further sum. A further memorandum Ex.D11 dated 22/2/68 shows a total indebtedness of £1397 which ties in with the mortgage of 22/2/68 for £1397, and it contains the plaintiff's promise to give the defendant 1 a mortgage to secure repayment of the £1397 and Ex.D12 dated 22/2/68 is the mortgage.

I find that the mortgage was created on 22/2/68 for £1397.9s. and that there is no evidence to indicate that in 1968 the defendant 1 was an unlicensed money lender.

20 Ex.6(a) dated 16/10/67 is a provisional approval by the N.L.T.B. of a lease of N.L.T.B. 4/9/1135, Delaivuilloqa commencing from 1/7/65 for 30 years to the plaintiff. It requires him to pay survey fee of £52.00 and 6 months rent at £94.00 a year before he can occupy. On 27/2/68 he paid £282 to the N.L.T.B. being 3 years rent and on 1/11/68 he paid the survey fee thereby fulfilling the conditions for occupation.

However, at the time of the mortgage and at the time of the sale by defendant 1, as mortgagee, about June 1970, the N.L.T.B. had not issued a lease to the plaintiff.

30 The plaintiff contends that the provisional approval did not create a registrable lease nor give him the right to claim one and at first sight it seems that support for that argument appears in Civ.App. 26/76, Court of Appeal, Ganpati v. Somasundaram. In that case the defendant held the Director's approval for a protected lease of Crown land and he was in occupation from 1970 to August 1973. He agreed to transfer to the plaintiff what the parties thought was his lease, but before they obtained the Director's consent to the transfer the plaintiff went into occupation, took over a cane contract and began to cultivate. When the Director's approval was obtained the defendant refused to transfer. On the plaintiff's suit for specific performance the Judge held that there was a dealing with a protected lease before the Director had consented and the agreement was null and void under S.13(1) Crown Lands Ordinance. The Court of Appeal reversed the judgment and ordered specific performance apparently approving and following the judgment of Stuart J. in

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Damodaran Reddy v. Raghwa Nand Civ.App.37/72.  
They mistakenly accepted that Stuart J. was  
considering an approval of a protected lease  
when he ordered specific performance of a  
transfer of a party's interest under the  
approval. Although he referred to protected  
leases he was actually dealing with an  
approval of a non-protected lease.

The Court of Appeal did not explain what  
kind of an interest it was which, under an  
approval for a lease, is capable of being  
assigned under a decree of specific performance,  
but seemed to take the view that an approval  
of a protected lease did not create an  
equitable lease. 10

In the early part of his judgment Stuart  
J. had considered whether an approval could  
give rise to an equitable lease under the rule  
in Walsh v. Lonsdale, 1882, 21 Ch.D.9. He  
concluded that since this was Crown land  
specific performance would not lie against  
the Crown unless special statutory authority  
invested the Court with such power. The  
learned judge pointed out that the Crown Lands  
Ordinance created no such power and therefore  
an equitable lease did not arise under the  
approval. 20

In coming to that conclusion he has  
informed me that he had overlooked the provi-  
sions of S.17 of The Crown Proceedings  
Ordinance which enables a Court, in lieu of an  
order for specific performance, to make a  
declaration that specific performance would  
lie if the Crown were not a party. It appears  
that counsel who appeared before the Court of  
Appeal did not draw their Lordships' attentions  
to S.17 of the Crown Proceedings Ordinance. 30

There is a similarity between a lease of  
native land under the Native Land Trust  
Ordinance, Cap.115 and a protected lease under  
S.13 of The Crown Lands Ordinance in that S.12  
(1) of Cap.115 has a provision similar to  
S.13(1) of Crown Lands Ordinance. Under both  
subsections any dealing with such land under  
an agreement made without consent of the  
Director or N.L.T.B. as the case may be, renders  
the agreement null and void. Under each  
Ordinance and its regulations, an approval of  
a lease may be issued to an applicant and in  
each case the approval notice requires the  
applicant to pay the survey fees and six months 40 50

rent. Under the Crown Lands Ordinance, Regs. 35 & 36 the Director is required to survey the land and is required to make out leases for execution by the applicant once the latter has paid the survey fee and 6 months rent. If the Director does not comply with those regulations I think a writ of mandamus could perhaps issue against him, or under S.17 of the Crown Proceedings Ordinance the applicant may sue for a declaration that he would be entitled to specific performance of the Director's agreement to grant a protected lease. I think he would be entitled to the benefit of the rule in Walsh v. Lonsdale 1882, 21 Ch.D.9 which lays down that a contract for a lease which can be specifically enforced places the tenant in the same position in equity, as if the lease had been granted.

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The plaintiff in these proceedings was in possession of native land; an approval for a 30 year lease had been issued to him; he had paid the survey fee as required by R.15 (1) of the Native Land (Leases & Licenses) Regulations and condition 2 of the approval notice, and had paid 6 months rent as required by condition 2 of the approval. The N.L.T.B. having received the survey fee of £52 issued the plaintiff with a permit to occupy the land. The permit to occupy is Ex.P.6(b) and it states that,

"Chandra Prasad having paid an estimated survey fee of £52 is accepted as lessee of and is authorized by the N.L.T.B. to enter into occupation of the undermentioned land."

The permit to occupy is not a substitute for a lease because it expresses that the right to occupy depends on payment of rent and adds that the permit is non-transferable.

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Although a lease had not been executed the plaintiff applied by Ex.D.10, dated 22/2/68, to the N.L.T.B. for permission to mortgage N.L.T.B. No. 4/9/1135 Delaivuiloqa to the defendant 1. It was approved by the N.L.T.B.'s stamp dated 21/3/68.

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The N.L.T.B. appeared to regard the plaintiff as a tenant and in my view the plaintiff was in a position to require them to prepare a lease for execution. He would not have to rely upon S.17 of the Crown Proceedings Ordinance

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for specific performance because the N.L.T.B. is a statutory body and not a Ministry of the Crown. In equity he was the lessee of a 30 year lease on the terms of the notice of approval.

If I am correct in so holding he possessed an interest in the land which could be mortgaged.

It is necessary to consider whether the agreement between the plaintiff and defendant 1 amounted to a mortgage. 10

The Ex.D.12 wrongly recites that the plaintiff "being the registered proprietor of the piece of land described as follows:- " He was not a registered proprietor. The mortgage document Ex.D.12 refers to the plaintiff's indebtedness to defendant 1 and to a further loan. No doubt Ex.D.12 intends to incorporate the provisions of the former Cap.136 as to the mortgagee's powers of sale etc. but for reasons which appear hereinafter I do not think that the mortgage was registrable. Nevertheless Ex.D.12 displays an intention to create a mortgage, and any agreement in writing and properly signed, however informal, by which any property real or personal is to be a security for a sum of money owing or advanced, is a charge and amounts to an equitable mortgage (Cootes Law of Mortgages 8th Edn., Vol. 1 p.62(ii)). The fifth clause in Ex.D.12 states that the mortgagee shall have the right to hold the title deeds of the lands until the debt is repaid with interest. Of course the plaintiff held no title deeds but he held an approval notice, he had paid the survey fee and 6 months rent and had a permit to occupy and was in occupation; he held documents which gave him the right to call for the execution of a lease. The N.L.T.B. in approving the mortgage must be taken to have consented to the defendant having the right to hold the approval Ex.6(a) as security. Effect will be given to an intention to create a security notwithstanding any mistake in the manner of creating it (Coote, supra at 65 note q), and securities will take effect according to the intention of the parties, both as to quantity of the property charged, and the extent of the mortgagor's interest in it (supra, note r). Even if the approval Ex.P.6(a) were not handed to him the mortgage document Ex.D.12 when approved gave him the right to 20 30 40 50

call for them, and he was in as strong a position vis a vis the plaintiff, as if he actually held them. He was, in my view, the equitable mortgagee of an equitable lease.

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10 I regard that conclusion as being reinforced by the memorandum of money lending contract Ex. P.1(n) dated 22/2/68, the date of the mortgage document Ex.D.12. It recites the plaintiff's indebtedness, acknowledges a further loan of £463.9s. making a total of £1397.9s. and contains the plaintiff's promise to give defendant 1 a mortgage to secure its repayment and states that a form of mortgage is attached, this is a reference to Ex.D.12 and Ex.P.1(o) (which duplicate each other). An express agreement in writing to make a mortgage, in consideration of an actual advance made at 20 the time of the agreement, is sufficient on the principle of equity that what has been agreed to be performed shall be performed in specie and creates a specific charge (Coote, 62, note 1). Thus the Ex.P.1(n) is sufficient to create an equitable mortgage which would of course depend on the N.L.T.B.'s consent being obtained. That consent was obtained and the plaintiff would be bound to honour his promise to give defendant 1 a mortgage.

30 S.88 of the Property Law Act which came into force in August 1971 applies the Act to mortgages executed before or after the Act. But this mortgage was created and the property sold under it prior to August 1971 and Mr. Ramrakha, for the plaintiff, submits that the transaction is governed by The Land (Transfer & Registration) Ordinance Cap.136, of the 1955 laws (hereinafter called the form Cap.136).

40 S.2 of the former Cap.136 defines "mortgage" as "any charge on land created for securing a debt and the instrument affecting the same" and "land" means "land, messuages, tenements, hereditaments, corporeal and incorporeal of every kind and description or any estate or interest therein".

50 The plaintiff's equitable lease and the mortgage come within those definitions but I do not think that the equitable lease would be registrable. Until the lease was executed and delivered to the Registrar of Titles the latter would have no document on which to endorse any memorandum of registration

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as required by Sections 9(1) & 11 of the former Cap.136 and there would be nothing for him to fil in the Register of Titles under S.15.

By S.17 every instrument purporting to affect land under the Ordinance required a memorial thereof to be entered on the duplicate instrument of title filed in the register of titles. I do not think it was possible for the defendant 1 to register his mortgage because there was no instrument of title filed with the Registrar.

10

S.25 enacts that no instrument until registered shall be effectual to render any land liable as security for the payment of money. It follows that the mortgage held by defendant 1 was not a good security under the ordinance. Nevertheless the defendant 1 sold the plaintiff's equitable lease as mortgagee and I have to consider whether this was a valid sale under a lawful mortgage notwithstanding the provisions of the former Cap.136.

20

Evidence concerning the sale itself is very pauce. Ex.D2 is the defendant 1's advertisement in the Fiji Times dated 16/5/70 inviting tenders for the plaintiff's land revealing it as a mortgagee's sale. The land is described as Native Lease 4/9/1135, Delaivulioqi, Sasa in Macuata Province. It is the same description as used in the mortgage Exc.P.1(o) and D.12. On 19/3/71 Mr. Ramrakha for the plaintiff wrote a letter Ex.P.7 to the N.L.T.B. describing the land and alleging that the mortgage was invalid and that proceedings were being taken. Ex. P.8 is the N.L.T.B.'s reply dated 19/3/71 stating that the mortgagee had already exercised his power of sale and that the lease had been registered in the transferee's name.

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Ex.D13 is a bundle of documents to which the plaintiff was referred in cross-examination. He admitted receiving them from Mr. Chauhan who had acted as his solicitor. They include Mr. Chauhan's account dated 22/3/71 showing a sale under the mortgage to Sanatan Dharam School (3rd, 4th & 5th defendants) for \$4,700 and a balance of \$232.48 due to the plaintiff after deducting the mortgage, interest, solicitor's fees and old outstanding accounts. Included in Ex.D13 is Mr.Chauhan's cheque for \$232.48 and Mr.

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Ramrakha's letter dated 23/4/71 returning the cheque and referring to the mortgagee's sale.

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A lease of the same land was issued to the school by the N.L.T.B. and the Statement of Claim refers to it as Native Lease No. 13810 and Ex.P.4 is the memorandum of lease registered by the Registrar of Titles on 8/3/71 as Native Lease 13810, and it quotes the N.L.T.B. No. 4/9/1135 the location and acreage.

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10 By S.14 of the former Cap.136 the title of the registered proprietor could not be challenged except on the ground of fraud or misrepresentation to which he was proved to have been a party. As I said at the outset of this judgment all the allegations of fraud were withdrawn by Mr. Ramrakha during the proceedings, and it would appear that defendants 3, 4 and 5 had obtained an indefeasible title.

20 In his final address Mr. Ramrakha for the plaintiff also based a claim to remain in possession on what he alleged were the plaintiff's rights as a lessee under the Agricultural Landlord and Tenant Ordinance. He made no attempt to particularise or outline those rights; no reference was made to any section or part of A.L.T.O. which created any specific rights to which the plaintiff was entitled and which could not be mortgaged or disposed of by a mortgagee's sale as occurred in these proceedings.

30 He submitted that in Soma Raju v. Bhajan Lal Civ.App. (Court of Appeal) 48/76 it was held that one who takes a transfer of land and becomes the registered proprietor cannot defeat the rights of an agricultural tenant who is occupying it under A.L.T.O. That decision referred to a transfer by a landlord of land which his tenant occupied under an agricultural lease. It was held that the transferee of the reversion took subject to the rights of the agricultural tenant in possession although his tenancy was not registered under the Land Transfer Act 1971. That case differs substantially from the instant case in that the tenancy in Appeal 48/76 being a yearly tenancy did not require registration under the Act, although it was capable of registration. The lease in the instant case being an equitable lease it was not capable of registration. Another basic difference is that in Appeal 48/76 the tenant was not assigning his tenancy but his landlord was transferring the reversion; whereas in the instant

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case the landlord was not mortgaging his reversion but it was the tenant himself who by mortgage of his lease was vesting in the mortgagee the power of sale and transfer. The plaintiff herein cannot pretend that he simply transferred a reversionary interest subject to his own agricultural tenancy of all the land and for the entire period which he purported to assign. The only right which the plaintiff held was the right to an agricultural lease and when he mortgaged it to the defendant No.1 that was all that he had. 10

Mr. Ramrakha referred to Ballman's Commentary of the Torrens System of Registration 1st Edn., p.249 where the learned author observes that only a registered mortgagee can exercise the statutory power of sale. Sections 61, 62 & 63 of the former Cap.136 gave power of sale to a registered mortgagee. Had defendant 1 held an unregistered mortgage of registered land he may have had no power of sale under the Ordinance, but what he held was a mortgage of an unregistered equitable lease, which was outside the provisions of Cap.136 and could not be governed by them. The Torrens system is not a mode of creating interests in land but a system which enables holders of defined interests to protect their rights by registering their interests. A lease does not cease to be a lease because it has not been registered; the fact that it is not registered does not prevent the lessee from mortgaging his interest; non-registration simply defers the rights of the lessor and his mortgagee to someone who has registered a similar title. The plaintiff's equitable lease was not non-existent because it was not capable of registration. It did exist and it was capable of being mortgaged provided the N.L.T.B. approved. It would however be postponed to someone who happened to obtain a registered lease of the same land. In the circumstances defendant 1's rights were not created by or defeated by the law relating to registration but depended upon the terms of the mortgage Exc.D.12 (Ex.P.1(o)). 20 30 40

In Backhouse v. Charlton VIII C.D.444 the rights of an equitable mortgagee were considered. Malins V.C. at p.449 referring to the powers of mortgagees under documents creating mortgages said "if there is power of sale it is by sale, if there is no power of sale it is by foreclosure". 50

10 The defendant 1's powers are not specifically set out in the mortgage Ex.D.12 but I think it reveals the powers intended by the parties to be vested in defendant 1. The 6th clause states that if foreclosure and sale should be necessary then if the amount due is not realised the mortgagor will pay the balance. Clause 7 of Ex.D.12 refers to S.61 of the former Cap.136 which requires the mortgagee to give notice to the mortgagor to pay arrears and sums due before exercising his power of sale under S.63. Clauses 6 & 7 clearly contemplate that the mortgagee was intended to have the powers of sale contained in Cap.136. It also contains an undertaking by the mortgagee to obtain the consent of the N.L.T.B. before exercising his power of sale.

20 In exercising his power of sale the mortgagee gave the kind of notice which would have been required under S.61 being Ex.D1, dated 10/2/70, and he waited for more than a month after the service of such notice before taking any further step which was to advertise the sale on 16/5/70 (Ex.D.2). In June 1970 the plaintiff wrote Ex.P.2 to the N.L.T.B. asking them not to consent to the sale which indicates he was aware of the intention to sell.

30 In my opinion there was a valid sale by the defendant 1, as mortgagee, of an equitable lease mortgaged to him by the plaintiff.

Having, at the plaintiff's request, agreed to the creation of the mortgage it was not likely that the N.L.T.B. would obstruct the mortgagee in this exercise of his power of sale. I fail to see how they can be held liable in any way to the plaintiff.

40 Defendants 3, 4 & 5 as purchasers received an assignment of the plaintiff's right to a lease. The N.L.T.B. honoured the approval notice and issued a lease in their favour. The title of defendants 3, 4 & 5 having been duly registered it is for the purposes of this case indefeasible.

The plaintiff's claims against all the defendants are dismissed and the plaintiff will pay the taxed costs of each defendant.

Sgd. J.T.Williams  
(J.T.WILLIAMS)  
JUDGE

LABASA,  
9.2.1977

In the  
Supreme Court

No.12  
Order

9th February  
1977

No. 12

ORDER - 9th February  
1977

IN THE SUPREME COURT OF FIJI No.76 of 1971

BETWEEN: CHANDRIKA PRASAD (son of  
Guddu Lal) of Tabia, Fiji  
Cultivator PLAINTIFF

A N D : 1. GULZARA SINGH son of Hari  
Singh of Labasa, Moneylender  
2. NATIVE LAND TRUST BOARD 10  
3. SHIU PRASAD sone of Suchit  
Bhagat as Trustee  
4. BAIJ NATH son of Hardeo as  
Trustee  
5. CHANDRIKA PRASAD son of Halka  
as Trustee all three of Tabia  
and Trustees of the Tabia  
Sanatan Dharam School Committee  
DEFENDANTS

DATED AND ENTERED THE 9TH DAY OF FEBRUARY, 1977 20

THIS ACTION coming on for trial before His  
Lordship Mr. J.T. Williams on the 26th day of  
March 1976, 27th day of March, 1976, and on  
the 13th day of December, 1976 before this  
Court in the presence of the Counsel for the  
Plaintiff and for the Defendants

AND UPON reading the pleadings

AND UPON HEARING the evidence and what was  
alleged by the Counsel for the Plaintiff and  
the Defendants 30

IT IS THIS DAY ORDERED that this action do  
stand dismissed out of Court

IT IS FURTHER ORDERED that the plaintiff do  
pay to the defendants costs of this action

BY ORDER

Sgd.

DEPUTY REGISTRAR

No. 13  
NOTICE AND GROUNDS OF  
APPEAL - 15th February 1977

In the Court  
of Appeal

IN THE FIJI COURT OF APPEAL  
CIVIL JURISDICTION

No. 8 of 1977

No.13  
Notice and  
Grounds of  
Appeal

15th February  
1977

On Appeal from the  
Supreme Court of Fiji  
in Civil Action No.  
115 of 1975

10 BETWEEN: CHANDRIKA PRASAD s/o Guddu Lal  
of Tabia Fiji Cultivator  
APPELLANT  
(Original Plaintiff)

A N D : 1. GULZARA SINGH s/o Hari Singh  
of Labasa Moneylender  
2. NATIVE LAND TRUST BOARD  
3. SHIU PRASAD s/o Suchit Bhagat  
as Trustee  
4. BAIJ NATH s/o Hardeo as Trustee  
20 5. CHANDRIKA PRASAD s/o Halka as  
Trustee all three of Tabia and  
Trustees of Tabia Sanatan Dharam  
School Committee

RESPONDENTS  
(Original Defendants)

NOTICE OF APPEAL

30 TAKE NOTICE that the Fiji Court of Appeal will be  
moved at the expiration of (14) fourteen days  
from the service upon you of this Notice, or so  
soon thereafter as Counsel can be heard, by  
Counsel for the abovenamed Appellant for an Order  
that the Judgment given by His Lordship Mr. J.T.  
Williams be wholly set aside, and an order be made  
entering judgment with costs in favour of the  
plaintiff.

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

- 40 1. The first named respondent admitted that he  
was a moneylender and that he did not hold  
a license under the Moneylenders' Act on the  
22nd day of February, 1968 thus, the learned  
trial Judge ought to have held in law and in  
fact that Mortgage dated the 22nd February,  
1968 was invalid and/or unenforcable.
2. That, in any event, the respondents having

In the Court  
of Appeal

No.13  
Notice and  
Grounds of  
Appeal

15th February  
1977

(continued)

- admitted that the first named respondent was a moneylender within the meaning of the Moneylenders Ordinance, the onus lay on the first named respondent to show he was duly licensed at the material time.
3. By paragraph 10(A) of his defence, the first named respondent conceded that the mortgage dated 22nd day of February, 1968 was given in substitution or addition to a prior mortgage dated the 16th November, 1967 but such fact was not duly recited in the Moneylenders' Memorandum of Contract in relation to the Mortgage dated the 22nd day of February, 1968 thus, the learned trial judge ought to have held in law and in fact that the mortgage dated 22nd day of February, 1968 was unenforceable and/or invalid in law. 10
  4. Having regard to all the circumstances, and in particular the fact that the defendants did not call any evidence, the learned trial Judge erred in law and in fact in not holding that the mortgage dated the 22nd day of February, 1968 was unenforceable and/or invalid. 20
  5. The appellant held an approval notice from the second named respondent and the learned trial Judge erred in law, and in fact, in holding that such interest could be the subject of a mortgage, either equitable or legal. 30
  6. The first named respondent held, in any event, an unregistered mortgage, and the learned trial Judge erred in law, and in fact, in holding that the first named respondent could thereby dispose of the property as a mortgagee, and pass title to the third, fourth and fifth named respondents in law, and in fact.
  7. In any event, there was no evidence, or no sufficient evidence, from which the learned trial Judge could infer either in law or in fact that the first named respondent had exercised any powers of sale, and purported to transfer its title under the mortgage to the third, fourth and fifth named respondents. 40
  8. The position in law as the evidence stood at the trial was that the second named

respondent granted a tenancy to the appellant, and thereafter granted a similar tenancy on identical terms to the third fourth and fifth named respondents, and the learned trial Judge erred in law, and in fact, in not holding that the second tenancy was invalid.

In the Court  
of Appeal

No.13  
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15th February  
1977

(continued)

- 10 9. The learned trial Judge ought to have held in law and in fact in the circumstances that the appellant was a protected tenant under the provisions of the Agricultural Landlord and Tenant Act, and could not be divested of his tenancy in the circumstances of this case, or as proved at the trial.
- 20 10. The learned trial Judge erred in law and in fact in not holding that the onus lay on the mortgagee to prove that it had exercised its powers of sale properly and in not further holding that such powers had not in fact been exercised.
11. The learned trial Judge erred in law and in fact in not holding that the second named respondent had no powers to transfer any lease, but that in fact had gone beyond its powers in issuing a fresh lease to the third fourth and fifth named respondents.
- 30 12. The second named respondent could not in law usurp the functions of the Registrar of Titles under the Land Transfer Act, or the Property Law Act and the learned trial Judge ought to have held in law and in fact that the second named respondent could not divest the appellant of his rights in the tenancy.

DATED this 15th day of February, 1977.

RAMRAKHAS

PER: H.M.Patel

40 To the abovenamed first respondent and/or his solicitors Messrs. Chauhan & Co. Suva

To the abovenamed second respondent and/or its solicitors Messrs. Kato & Co. Suva

To the third fourth and fifth named respondents and/or its solicitors Messrs. Koya & Co. Suva

In the Court  
of Appeal

No.13  
Notice and  
Grounds of  
Appeal

15th February  
1977

(continued)

This Notice of Motion was taken out by Messrs.  
Ramrakhas Solicitors for the Appellant whose  
address for service is at the office of the  
said solicitors in K.W. March Limited's  
Building 77 Marks Street, Suva Fiji.

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Judgment of  
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No. 14

JUDGMENT OF HENRY, J.A.  
22nd March 1978

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

10

Civil Appeal No. 8 of 1977

Between: CHANDRIKA PRASAD s/o Guddu Lal  
Appellant

- and -

1. GULZARA SINGH s/o Hari Singh
2. NATIVE LAND TRUST BOARD
3. SHIU PRASAD s/o Suchit Bhagat
4. BAIJ NATH s/o Hardeo
5. CHANDRIKA PRASAD s/o Halka

Respondents

20

K.C.Ramrakha for the appellant  
G.P. Shankar for 1st respondent  
S.M. Koya for 3rd, 4th & 5th respondents  
E. Vula for 2nd respondent

Date of Hearing: 13.3.78

Date of Judgment: 22.3.78

JUDGMENT OF HENRY J.A.

This is an appeal against the dismissal  
of an action brought by appellant against  
respondents. First respondent is a moneylender 30  
so I shall refer to him as "the moneylender".  
Second respondent is a statutory body and will  
be referred to as "the Board" whilst third,

fourth and fifth respondents acted as trustees for the Tabia Sanatam Dharam School and they will be referred to as "the trustees". Appellant brought an action against respondents claiming relief or alternatively, damages in respect of the matters about to be set out in detail. The action came before the Supreme Court at Lautoka when it was dismissed with costs. From such dismissal the present appeal has been brought.

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10           On October 16, 1967 the Board in pursuance  
of the powers vested in it in respect of native  
land under the Native Land Trust Ordinance  
(Cap.115), issued to appellant what is known as  
a provisional approved application for a lease.  
This gave to appellant provisional approval of a  
lease of certain land called Delaivuiloqi  
containing  $11\frac{3}{4}$  acres for a period of 30 years  
from July 1, 1965 (sic) at a rental of £8 per  
acre per annum. The document provided that  
20           appellant would not receive final notice of  
approval, and had no right of occupancy, until  
rent for the first six months had been paid  
together with a sum of £52 for survey fees.  
It also provided that appellant may not  
transfer sublet mortgage or assign without the  
written consent of the Board. The conditions  
were complied with and a permit to occupy was  
duly issued but it was expressly stated to be  
non-transferable. Appellant had already been  
30           in occupation for some years and it will be  
noticed that the period of the lease was back-  
dated to 1965. The intention of the parties  
was that appellant would, in due course, be  
given a Memorandum of Lease in a registrable  
form. Under sections 10 and 11 of the Native  
Land Trust Ordinance (Cap.115) such a lease may  
be registered under the provisions of the  
Land (Transfer and Registration) Ordinance  
(Cap.136). Appellant thus became an equitable  
40           lessee.

          In the events which happened appellant  
never acquired the status of a registered  
proprietor of a lease in accordance with the  
above provisions for reasons about to be  
narrated. On February 22, 1968 appellant  
executed a form of mortgage in favour of the  
moneylender over his said interest. The  
description of the interest referred to the  
provisional approval and had a sufficient  
50           description of the land. This mortgage will  
require to be considered in more detail later.  
It secured a total sum of £1397.9.0 payable  
on demand together with interest at the rate  
of £12 percent per annum. It was sent to the



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Board for its consent which was duly granted on March 21, 1968. Appellant made default under the said mortgage. The moneylender purported to exercise a power of sale, and, on June 1970 sold the interest of appellant to the trustees for the sum of \$4700. A transfer, in the form prescribed for the transfer of a lease registered under Cap.136, was executed by the moneylender in favour of the trustees. The moneylender also executed a formal discharge of the mortgage and all documents were handed to the trustees. 10

The relevant documents were presented to the Board with a request that the Board grant to the trustees a lease in terms of the lease to which appellant was entitled under the provisional approval dated October 16, 1967. On November 23, 1970 the Board and the trustees executed a Memorandum of Lease which was for the same term of 30 years and which was duly registered with the Registrar of Titles as No. 13810 in accordance with the provisions of the Native Land Trust Ordinance (Cap.115), and the Land (Transfer and Registration) Ordinance (Cap.136). 20

Lack of detail in the notice of appeal as to the nature of the relief sought and failure to set out the grounds of appeal in logical order, make it inconvenient to set them out in this judgment. I shall proceed to deal in logical order with the relief now sought and consider the grounds applicable as they arise. 30

The first question is whether or not the trustees got an indefeasible title to lease No. 13810 freed from any claim by appellant in respect of the rights which he originally held by reason of his occupation under the provisional approval dated October 16, 1967 followed by the permit to occupy which was granted in pursuance of such provisional approval. Section 14 of Cap.136 provides as follows : 40

"Section 14. The instrument of title of a proprietor issued by the Registrar upon a genuine dealing shall be taken by all courts of law as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, and the 50

title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to have been a party or on the ground of adverse possession in another for the prescriptive period. A duplicate or certified copy of any registered instrument signed by the Registrar and sealed with his seal of office shall be received in evidence in the same manner as an original."

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(continued)

10

20

This section will give to the trustees an indefeasible title unless the appellant can set up some right to occupy which overrides section 14. On the assumption that the moneylender had no right to exercise a power of sale (and this will be discussed later) appellant claims that the provisional approval and permit to occupy coupled with possession, brought him within the provisions of the Agricultural Landlord and Tenant Ordinance (Cap.242) and its amendments. From this it was argued that such a tenancy would prevail over the registered memorandum of lease No.13810. In support of this proposition reliance was placed on Soma Raju v. Bhajan Lal - a case decided by this Court on November 26, 1976 under No. 48 of 1976. I turn now to consider this case.

30

40

The facts in Soma Raju's case can be shortly stated. The land was "agricultural land" of which the tenant had been a yearly tenant of part of some 24 years prior to the land being bought by a purchaser who had notice of such tenancy. The tenancy did not require registration under the Agricultural Landlord and Tenant Ordinance which provides for registration in certain other cases. The tenant made an application under the Ordinance to get recognition of his tenancy but the transfer of the landlord's interest was effected before his application was dealt with by the special tribunal set up for that purpose.

Spring J.A. (with whom the other members of the Court concurred) said :

50

"The authorities show that where there is an interest which is not capable of registration under the Land Transfer Act then the question arises whether the interest was independent of the indefeasibility

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provisions of the Land Transfer Act and would be a burden on the title of the registered proprietor.

If the estate or interest is not registrable under the Land Transfer Act then its validity so far as the indefeasible sections of the Land Transfer Act are concerned must be determined in accordance with the general principles of law."

10

Later he said :

"The tenancy agreement was not capable of registration because - being oral - it was not in registrable form but section 54(2) states that any lease which shall have been granted for a term not exceeding one year shall be valid without registration - in other words the position appears to be that any lease for a term not exceeding one year is valid without registration and the lessee would have the same legal estate and interest thereunder as if the land to which it related was not under the Land Transfer Act.

20

In my view (the argument of counsel that if the legislature intended such a tenancy should have appeared as an exception to section 39 of the Land Transfer Act) his argument must fail."

30

The learned Judge went on to dismiss the argument that the system of registration under the Act would not permit the application of the principle laid down in Miller v. Minister of Mines (1963) 1 All E.R. 109, and said:

"If a contract of tenancy under ALTO is not registrable under the Land Transfer Act and the indefeasibility provisions of that Act are to override the contract of tenancy then the tenancy would be of no value to the tenant except as against the original landlord."

40

The Court of Appeal held that a tenancy of the nature described was a valid tenancy which prevailed against the indefeasibility provisions of the Land Transfer Act.

The nature of the occupancy of appellant

10 must now be considered. He had a permit to  
occupy the land in terms of the provisional  
approval dated October 16, 1967. Under these  
documents he was entitled to a lease for a  
period of 30 years. The provisional approval  
provided that the lease would be subject to the  
conditions set out in the Native Land (Lease  
and Licences) Regulations (Cap.104). Section  
18 of these regulations provides that the  
lease shall be in form A of the schedule  
which clearly provides for a lease registrable  
under the Land (Transfer and Registration)  
Ordinance. It is the same form as the Memorandum  
of Lease granted to the trustees. Section  
8 of the Agricultural Landlord and Tenant  
Ordinance (Cap.242) provides that a contract  
of tenancy shall be evidenced by an instrument  
in writing which shall be in the prescribed  
form signed by both parties. Subsection 3(a)  
20 then provides :

"Section 8(3)(a). Every instrument  
of tenancy shall be signed by the  
parties thereto and -

30 (a) if registrable under the provisions  
of the Land Transfer Act, 1971 shall  
be registered in accordance with the  
provisions of that Act and, notwith-  
standing the provisions of section 59  
of this Act, all other provisions of  
the said Act shall apply to such  
instrument and all dealings relating  
thereto; or "

40 Subsection (h) provides for cases where the  
instrument is not registrable. Assuming then  
for the purpose of this case, but without so  
deciding, that the facts earlier recited did  
create a tenancy to which the Agricultural  
Landlord and Tenant Ordinance applied it is  
clear that a system of registration for such  
a dealing to be registered under the Land  
Transfer Act is provided for. The most  
favourable position which appellant can take  
is that he had an equitable interest which  
would in due course result in the execution  
of a Memorandum of Lease registrable under the  
Land Transfer Act. The reasoning in Soma Raju's  
case and Miller v. Minister of Mines does not  
apply to a right to have a registrable Memorandum  
of Lease executed. Prior registration of lease  
50 No.13810 under the Land (Transfer and Registra-  
tion) Ordinance, (Cap.136) effectually gave  
the lease to the trustees priority over the

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right of appellant to require the Board to execute in his favour a registable Memorandum of Lease in terms of the provisional approval.

Counsel for appellant conceded that, if the interest of appellant under the provisional approval notice created an interest to which the trustees' lease was subject, then that disposed of all relief sought. However, that has not happened so the relief claimed against the moneylender and the Board must now be considered. In respect of the moneylender counsel contended that the said mortgage was void for non-compliance with the provisions of the Moneylenders Ordinance (Cap.210) and that no power of sale had been conferred upon the moneylender by the said mortgage. In respect of the Board it was claimed that it was in breach of a contract to grant to appellant a registrable Memorandum of Lease in terms of the provisional approval notice. If either or both claims succeeded it was agreed in the Court below that assessment of damages would later be determined as a separate issue. So the two questions are now (a) Is the moneylender liable for wrongly exercising a power of sale which resulted in the loss of appellant's right to a lease in terms of the approval notice, and, (b) Is the Board liable for a breach of a contract to grant to appellant such a lease?

It is accepted that a mortgagee under an unregistered mortgage has no power of sale unless it can be found in the instrument creating the mortgage. In the absence of such a power application must be made to the Court. That is a sufficient statement of the law for present purposes. Apparently, in accordance with common custom, the mortgage was prepared in the form prescribed for use under the provisions of the Land Transfer Ordinance. The intention was to register when the title, in this case a registered lease, came into existence. This document would require some amendment before it could be registered because the lease was not, and in fact could not be, correctly described with reference to its registration. However, the interest of appellant was sufficiently identified. The mortgage declared that "the mortgagor hereby mortgages to the mortgagee the land above described". Provision was made for the document to be signed by the solicitor of the mortgagee "as correct for the purposes of the Land Transfer (Transfer and Registration)

Ordinance (Cap.136)". The solicitor signed this certificate which is a requirement before acceptance by the Registrar of Titles for registration but there is no evidence when this certificate was signed. There were a number of covenants. The following should be noted.

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10 "SEVENTHLY It is hereby agreed that the term "one calendar month" referred to in section 61 of the Land (Transfer and Registration) Ordinance (Cap.136) shall for all purposes of this security be reduced to "seven days". "

(continued)

There was in addition a provision intended to bind the mortgagee. It reads :

" MORTGAGEE'S UNDERTAKING

20 I, the undersigned GULJARA SINGH (father's name Hari Singh) of Tabia, Labasa in the Colony of Fiji Licensed Moneylender the within described Mortgagee HEREBY ACKNOWLEDGE AND UNDERTAKE that in the event of it becoming it necessary to exercise the powers of sale under the provisions of section 63 of the Land (Transfer and Registration) Ordinance Cap.136 and to grant any tenancy or lease under the said powers contained in the within mortgage and such transfer tenancy or lease in 30 exercise of any such power of sale will require the prior consent of the Native Land Trust Board, Suva in writing as Lessor of the within described Native Lease No. 4/9/1135. "

Section 63 subsections (1) and (2)  
read :

40 "Section 63(1). If default in payment or in performance or observance of any covenant continues for one month after the service of such notice, the mortgagee or encumbrancee may sell or concur with any other person in selling the mortgaged or encumbered land or any part thereof either subject to prior leases, mortgages and encumbrances or otherwise, and either together or in lots by public auction or by private contract, and either at

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one or several times, subject to such terms and conditions as the mortgagee or encumbrancee thinks fit, with power to vary any contract for sale and to buy in at any auction or to vary or rescind any contract for sale and to resell without being answerable for any loss occasioned thereby, with power to make such roads, streets and passages and grant such easements of rights of way or drainage over the same as the circumstances of the case require and the mortgagee or encumbrancee thinks fit, and may make and sign such transfers and do such acts and things as are necessary for effectuating any such sale. 10

(2) No purchaser shall be bound to see or inquire whether default has been made or has happened or has continued or whether notice has been served or otherwise into the propriety or regularity of any such sale." 20

Then follows two further subsections which are applicable only after registration. They give indefeasibility to a transferee under the power of sale and are not applicable until after registration.

Section 61 first deals with the effect of registration and then goes on to deal with the case of default by a mortgagor. It provides that if default shall continue for "one month or for such other period as is therein for that purpose expressly fixed" then certain consequences may follow. The side note to the schedule which reads "effect of mortgage - mortgagee in default" is a fair description of the subject matter of section 61. However that may be, it is clear that the intention of the parties as evidenced in the document is that the default provision in section 61 was to be modified expressly by reducing the period from one month to seven days. Section 63 was also modified as above stated. 30 40

A Court, in deciding the terms of a contract between parties, is entitled to look at its express provisions and at any expression which indicates an intention that other provisions, not in the document itself, should 50

10 be part of the contract. Unless it were  
the intention of the parties to incorporate  
sections 61 and 63 into their contract it  
was superfluous to make any reference to  
them. Express provisions should not be treated  
as otiose unless it is impossible to give them  
any reasonable effect. The intention of the  
parties is primarily to give effect to every  
provision in their contract. In my view the  
clear intention to be gathered from the  
document as a whole is that it was intended  
that sections 61 and 63, modified as expressly  
stated, should be included as part of the  
contract. It is nothing to the point that  
the mortgage has not been registered although  
obviously it was the intention to register,  
so that all the other provisions of the  
Ordinance would also apply. The contract  
evidenced by the writing came into force as  
20 soon as it was executed and the loan was  
actually advanced. Therefore the mortgage  
gave a power of sale to the moneylender to be  
exercised in terms of sections 61 and 63 as  
modified. There is no claim that it was not  
so exercised.

30 Mr.Ramrakha conceded that, if the  
mortgage contained a power of sale which has  
been actually exercised, then appellant's  
case must fail. Counsel gave no reasons,  
but, in my opinion this concession was  
properly made. Even if the mortgage were  
illegal by reason of a breach of the Money-  
lenders Ordinance (Cap.210) it is clear that  
the sale to the trustees cannot be attacked  
upon the ground of illegality. This is so  
because section 26 protects the trustees who,  
it is not disputed, acted bona fide for value  
and without notice of any defect due to the  
40 operation of the Ordinance. The trustees  
come precisely within the protection of  
section 26 which saves them when dealing  
with the moneylender's security even if the  
security itself is unenforcible against  
appellant. Since the Board did no more than  
give effect to the dealing of the trustees  
no claim can be made by appellant against  
the Board. Any claim against the Board must  
therefore fail.

50 I turn lastly to the position between  
appellant and the moneylender.

After dealing generally in section 26  
with the right of bona fide holders for value



the following provision appears in subsection  
(1)(a)(ii) :

"Subsection (1)(a)(ii).....  
But in every such case the moneylender  
shall be liable to indemnify the  
borrower or any other person who is  
prejudiced by virtue of this section  
and nothing in this proviso shall  
render valid an agreement or security  
in favour of or apply to proceedings  
commenced by an assignee or holder  
for value who is himself a money-  
lender; and "

10

This requires a consideration of the position  
between appellant and the moneylender.

Two grounds were put forward upon which  
it was claimed that the said mortgage dated  
February 22, 1968 was illegal by reason of  
breaches of the Ordinance. They were :

1. that the moneylender was not  
registered at the date of execution;  
and,
2. that there was a breach of section 16  
of the Ordinance in that a prior  
mortgage was not disclosed.

20

Section 6 provides for a method of prima  
facie proof of registration or non-registration.  
The onus of proof thus lay on appellant who  
made the allegation but advantage of section 6  
was not taken nor was any evidence adduced.  
The matter therefore came for decision on the  
pleadings.

30

The relevant pleading of appellant is  
para.7 of the Supreme Court. It reads :-

"The first defendant is, and has been,  
at all material times, a practising  
moneylender within the meaning of the  
Moneylenders Ordinance Cap.210, but was  
not duly licensed under the provisions  
of the same, having paid no license fees  
for the year 1967 until the 9th February,  
1968 and having paid fees for the year  
1968 on the 4th day of March, 1968. "

40

To this moneylender replied as follows :

"(a) that he admits that he has been a

10

moneylender within the meaning of the Moneylenders' Ordinance Cap.210 but says that he had entrusted the payment of the licence fees in cash for the year 1967 in 1967 to one Ram Rattan (s/o Charlie Algu) who had fraudulently converted the said monies to his own use and that the 1st defendant did not learn about it until 1968 when he paid licence fees for the year 1968. That in the result he had to make a second payment in the year 1968.

(b)that except as herein expressly admitted he denies each and every allegation contained in paragraph (7) of the Statement of Claim. "

20

The crucial date was February 22, 1968. The admission in para.7 of the Statement of Defence is no higher than that the license fees for 1967 and 1968 were not paid "until 1968". Except for that admission para. 7 of the Statement of Claim was denied. I consider that was a sufficient denial of the specific date pleaded in the Statement of Claim and that it put appellant to the proof of the specific fact alleged. This ground fails.

30

The second ground relates to section 16 which enacts that no contract for repayment of money lent shall be enforceable unless a note or memorandum in writing of the contract in the English language is signed before the money was lent or before the security was given. I have paraphrased the section sufficiently for present purposes. The allegation was that the mortgage dated February 22, 1968 "was made on November 16, 1967 and not on February 22, 1968". The moneylender denied this allegation and pleaded as follows after the denial.

40

50

".....and further says that a mortgage deed was first made on the 16th day of November 1967 but it was not forwarded to the second defendant for its consent owing to the fraudulent action of the said Ram Rattan (s/o Charlie Algu) and, on the 22nd of February 1968 the Plaintiff had borrowed further monies (which said advances are acknowledged by the Plaintiff in paragraph (9) of the Statement of Claim) when the second

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1978

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deed of mortgagee was executed and duly  
consented to by the second defendant.

That except as herein expressly admitted  
he denies each and every allegation. "

The learned Judge disbelieved the evidence  
of appellant about the date of execution and  
held that the mortgage was in fact made and  
signed on February 22, 1968 but it is  
necessary to deal with a transaction on  
November 16, 1967.

10

Exhibits D3 and D4 were produced. Exhibit  
D4 was a mortgage for a sum of £904 signed by  
appellant in November 16, 1967. It cited  
earlier loans and a present loan of £150  
making a total of £904. The learned Judge  
found that this document bore no stamps and  
no approval by the Board such approval being  
necessary by reason of a provision in that  
conditional approval notices under which  
appellant occupied the land as an equitable  
lessee. Counsel for appellant argued that,  
applying the law laid down by this Court in  
Totaram v. Nasibau 8 F.L.R. 29, this was a  
breach of section 16 in that this earlier  
mortgage was not included in the memorandum  
exhibit D11 which was signed on February 22,  
1968 in relation to the mortgage given on that  
date. Totaram v. Nasibau held that a condition  
for repayment from a new loan of a sum already  
owing was a term which ought to be included  
in the memorandum required by section 16 on  
the execution of a security for the new loan.

20

30

In Totaram's case the loan of £799  
included a sum of £681 already owed so that  
the advance then being made was only £118.  
No mention was made of the sum of £681 in any  
memorandum. The Court held that, since the  
security was for a present advance of £118  
together with an additional sum of £681  
already owing, this fact ought to have been  
disclosed in a memorandum in terms of section  
16 because the inclusion of the sum of £681  
earlier advanced was a term of the contract  
then being entered into. Thus the security was  
in breach of section 16.

40

In the instant case both the memorandum  
(Ex.D11) and the mortgage (Ex.D12) disclosed  
the fact that the prior loan of £150 was  
included in the contract. I do not consider  
it was necessary also to give details of the

50

mortgage which, according to the finding of the learned Judge, had not been completed. It was clear that the sum of £150 referred to in that document was the sum of £150 referred to in exhibits D11 and D12 and it was disclosed in memorandum exhibit D11.

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No.14  
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Henry, J.A.

22nd March  
1978

(continued)

10 I therefore hold that appellant has not shown that there was a breach of the provisions of the Moneylenders' Ordinance in respect of the mortgage dated February 22, 1968.

20 The passages in the judgment of the Court below, dealing with the case of Ganpati v. Somasundaran and the reference in that case to Damodaran Reddy v. Raghwan Nand, are not relevant on the view which I have taken on the issues on appeal. However, I desire to state that I do not accept the views expressed by the learned Judge in his judgment when he considered those cases. I should add I was not a member of the Court in Ganpati's case.

I would dismiss the appeal with costs and affirm the judgment in the Court below.

(Sgd) T. Henry  
JUDGE OF APPEAL

In the Court  
of Appeal

No.15  
Judgment of  
Marsack, J.A.

22nd March  
1978

No. 15

JUDGMENT OF MARSACK, J.A.  
22nd March 1978

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 8 of 1977

Between:

CHANDRIKA PRASAD s/o Guddu Lal

Appellant

- and -

10

1. GULZARA SINGH s/o Hari Singh
2. NATIVE LAND TRUST BOARD
3. SHIU PRASAD s/o Suchit Bhagat
4. BRIJ NATH s/o Hardeo
5. CHANDRIKA PRASAD s/o Halka

Respondents

K.C.Ramrakha for the appellant  
G.P.Shankar for 1st respondent  
S.M. Koya for 3rd, 4th and 5th respondents  
E.Vula for 2nd respondent.

20

Date of hearing: 13th March, 1978

Date of Judgment: 22nd March, 1978

JUDGMENT OF MARSACK, J.A.

I agree that, for the reasons set out  
in full in the Judgment of Henry J.A., this  
appeal should be dismissed; and I have  
nothing to add.

(Sgd) C.C.Marsack  
JUDGE OF APPEAL

SUVA,  
22nd March, 1978

30

No. 16

JUDGMENT OF GOULD V.P.  
22nd March 1978

In the Court  
of Appeal

No.16  
Judgment of  
Gould, V.P.

22nd March  
1978

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 8 of 1977

Between:

CHANDRIKA PRASAD s/o Guddu Lal

Appellant

10

- and -

1. GULZARA SINGH s/o Hari Singh
2. NATIVE LAND TRUST BOARD
3. SHIU PRASAD s/o Suchit Bhagat
4. BRIJ NATH s/o Hardeo
5. CHANDRIKA PRASAD s/o Halka

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K.C.Ranrakha for the Appellant  
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E.Vula for the 2nd Respondent  
S.M.Koya for the 3rd, 4th & 5th Respondents

Date of Hearing: 13th March, 1978

Delivery of Judgment: 22nd March, 1978

JUDGMENT OF GOULD V.P.

I have had the advantage of reading the judgment of Henry J.A.; I agree with his reasoning and conclusions and have nothing to add.

30

All members of the Court being of the same opinion the appeal is dismissed with costs.

(Sgd) (T.J.Gould)  
VICE-PRESIDENT

In the Court  
of Appeal

No.17  
Order

22nd March  
1978

No. 17

ORDER - 22nd March 1978

IN THE SUPREME COURT OF FIJI  
CIVIL JURISDICTION  
CIVIL APPEAL NO. 8 OF 1977

BETWEEN: CHANDRIKA PRASAD s/o Guddu Lal  
APPELLANT

- and -

1. GULZARA SINGH s/o Hari Singh
2. NATIVE LAND TRUST BOARD 10
3. SHIU PRASAD s/o Suchit Bhagat
4. BRIJ NATH s/o Hardeo
5. CHANDRIKA PRASAD S/o Halka

RESPONDENTS

WEDNESDAY THE 22ND DAY OF MARCH, 1978

UPON MOTION by Way of Appeal from the Judgment dated the 9th day of February, 1977 made unto this Court by Counsel for the Appellant (Original Plaintiff)

AND UPON HEARING MR. KARAM CHAND RAMRAKHA of Counsel for the Appellant and MR. GANGA PRASAD SHANKAR of Counsel for the 1st Respondent, MR. EPENERI VULA of Counsel for the Second Respondent and MR. SIDDIQ MOIDIN KOYA of Counsel for the Third, Fourth and Fifth Respondents 20

AND UPON READING the said judgment

AND MATURE deliberation thereupon had

IT IS THIS DAY ORDERED that the judgment of His Lordship Mr. Justice J.T. Williams in the Supreme Court of Fiji dated the 9th day of February, 1977 be confirmed, and that the appeal do stand dismissed out of Court 30

AND IT IS FURTHER ORDERED that the Appellant do pay the Respondents their costs of this Appeal

BY ORDER  
(Sgd)  
REGISTRAR

No. 18

ORDER GRANTING LEAVE TO  
APPEAL TO HER MAJESTY IN  
COUNCIL - 14th April 1978

In the Court  
of Appeal

No.18  
Order granting  
Leave to  
Appeal to Her  
Majesty in  
Council

14th April  
1978

IN THE FIJI COURT OF APPEAL  
CIVIL JURISDICTION

Civil Appeal No. 8 of 1977

BETWEEN: CHANDRIKA PRASAD s/o Guddu Lal

APPELLANT

10 A N D : 1. GULZARA SINGH s/o Hari Singh  
2. NATIVE LAND TRUST BOARD  
3. SHIU PRASAD s/o Suchit Bhagat  
4. BRIJ NATH s/o Hardeo  
5. CHANDRIKA PRASAD s/o Halka

RESPONDENTS

BEFORE THE HONOURABLE MR. JUSTICE C.C.MARSACK  
TUESDAY THE 14TH APRIL, 1978

20 UPON READING the Summons for Order to Fix  
Security for Appeal herein dated the 28th day  
of March 1978

AND UPON HEARING MR. AJIT SWARAN SINGH of  
Counsel for the Appellant and MR. S.M. KOYA  
of Counsel for the 1st, 3rd, 4th and 5th  
Respondents and MR. E. VULA of Counsel for  
the 2nd Respondent

IT IS THIS DAY ORDERED that the Appellant do  
have leave to appeal to Her Majesty in Council  
from the judgment of the Fiji Court of Appeal  
given on the 22nd day of March, 1978

30 AND IT IS FURTHER ORDERED THAT the Appellant  
do within 40 days from the date hereof deposit  
in Court the sum of \$1000:00 by way of Security  
for Costs

AND IT IS FURTHER ORDERED that the Appellant  
do prosecute this appeal with all due diligence.

BY ORDER

(Sgd)

REGISTRAR



EXHIBITS

P1(A)

Letter, K.  
Chauhan to  
Gibson & Co.

13th April  
1970

EXHIBITS

P1(A)

LETTER, K.CHAUHAN TO GIBSON  
& CO. - 13th April 1970

K. CHAUHAN  
Barrister & Solicitor  
Commissioners for Oaths

CABLE ADDRESS "CHAUHAN"  
LABASA, P.O.BOX No.28  
TELEPHONE Nos. OFFICE: 440  
RESIDENCE: 439

Nasekula Road,  
Nasea, Labasa,  
Fiji

10

13th April, 1970

Messrs. Gibson & Company,  
Solicitors,  
LABASA

Dear Sirs,

re: Chandrika Prasad s/o Gudulal

Further to your letter dated 17th March, 1970  
enclosed please find the following as requested:

- 1. Copy of Promissory Note No.87368 dated 1.11.68 20
  - " " " " " 86362 " 28. 5.68
  - " " " " " 72940 " 24. 5.65
  - " " " " " 72923 " 30. 4.65
  - " " " " " 68422 " 30. 7.64
  - " " " " " 73263 " 30. 6.65
  - " " " " " 68177 " 28. 4.64
  - " " " " " 68178 " 29. 4.64
  - " " " " " 68406 " 3. 7.64
- 2. Copy of Memorandum of Contract dated 5th July, 1967 30
- 3. Copy of Crop Lien book 67 folio 1308 " " "
- 4. Copy of Promissory Note No.83882 dated 14.12.67
  - " " " " " 82242 " 26. 7.67
  - " " " " " 83860 " 19. 9.67
- 5. Copy of Memorandum of Contract dated 22.2.68
- 6. " " Mortgage dated 22.2.68.

I did not ever receive your letter dated 30th  
September, 1969 I have also enclosed the Statement  
of Account for which please forward me the sum of  
10 cents.

40

Might I warn your client to pay forthwith  
failing which I shall have no alternative other  
than to exercise the mortgagee's power of sale.

Kindly acknowledge receipt on the duplicate of this letter.

EXHIBITS

Yours faithfully,  
(Sgd) K. Chauhan  
K. CHAUHAN

P1(A)  
Letter, K. Chauhan to Gibson & Co.  
13th April 1970  
(continued)

Encls: 17

EXHIBITS

P1(B)

10

I.O.U. £25 CHANDRIKA PRASAD  
TO GULJARA SINGH - 24th May 1965

P1(B)  
I.O.U. £25  
Chandrika Prasad to Guljara Singh  
24th May 1965

Principal sum: £25-0-0 (Twenty-Five Pounds)  
Being cash advanced. 1/- stamp  
Interest 12% per annum.  
Dated 24th May, 1965

72940

20

UPON DEMAND I the undersigned CHANDRIKA PRASAD (son of Gudulal) of Tabia, Labasa Taxi driver promise to pay to GULJARA SINGH (son of Hari Singh) of Tabia, Labasa Licensed Moneylender or order the sum of £25-0-0 (Twenty-Five Pounds) being cash advanced this day to me together with interest thereon at the rate of 12% per annum from the date hereof. Value received Payable at Labasa.

I CERTIFY that I read over the contents) hereof in the Hindustani language to the borrower who appeared to understand) the meaning of the same. The said sum) of £25-0-0 was paid by the lender to) the borrower in my presence. } Sgd. Chandrika Prasad

30

Sgd. K. Chauhan  
Solicitor, Labasa

EXHIBITS

P1(C)

I.O.U. £38  
Chandrika  
Prasad to  
Guljara Singh  
  
30th April  
1965

EXHIBITS

P1(C)

I.O.U. £38 CHANDRIKA PRASAD  
TO GULJARA SINGH - 30th April  
1965

2/- stamp cancelled

Principal sum: £38-0-0 (Thirty-eight Pounds)  
Being cash advanced  
Interest 12% per annum.  
DATED 30th April, 1965. 72923 10

ON DEMAND I, the undersigned CHANDRIKA PRASAD  
son of Gudulal of Tabia, Driver promise to pay to  
GULJARA SINGH son of Hari Singh of Tabia, Labasa  
Licensed Moneylender or order the sum of £38-0-0  
(Thirty-eight pounds) being cash advanced this  
day to me together with interest thereon at the  
rate of 12% per annum from the date hereof.  
Value received. Payable at Labasa.

I CERTIFY that I read over the contents }  
hereof in the Hindustani language to } Sgd. CHANDRIKA PRASAD 20  
the borrower who appeared to understand }  
the meaning of the same. The said sum }  
of £38-0-0 was paid by the lender to }  
the borrower in my presence. }

SGD. K. CHAUHAN  
Solicitor, Labasa

P1(D)

I.O.U. £40  
Chandrika  
Prasad to  
Guljara Singh  
  
30th July  
1964

EXHIBITS

P1(D)

I.O.U. £40 CHANDRIKA PRASAD  
TO GULJARA SINGH - 30th July 1964

30

2/- stamp duty

Principal sum: £40-0-0 (Forty Pounds)  
Being cash advanced.  
Interest 12% per annum.  
DATED this 30th July, 1964 68422

UPON DEMAND I the undersigned CHANDRIKA PRASAD  
(son of Gudulal) of Tabia, Labasa driver promise  
to pay to GULJARA SINGH (son of Hari Singh) of  
Tabia, Labasa Licensed Moneylender or order the sum  
of £40-0-0 (Forty Pounds) being cash advanced this 40  
day to me together with interest thereon at the  
rate of 12% per annum from the date hereof. Value

Received. Payable at Labasa.

EXHIBITS

I CERTIFY that I read over the contents hereof in the Hindu-stani language to the borrower who appeared to understand the meaning of the same. The said sum of £40-0-0 was paid by the lender to the borrower in my presence.

Sgd. CHANDRIKA PRASAD

P1(D)  
I.O.U. £40  
Chandrika  
Prasad to  
Guljara Singh  
30th July  
1964  
(continued)

10

Sgd. K. CHAUHAN  
Solicitor, Labasa.

EXHIBITS

P1(E)

I.O.U. £60 CHANDRIKA PRASAD  
TO GULJARA SINGH - 30th June  
1965

P1(E)  
I.O.U. £60  
Chandrika  
Prasad to  
Guljara Singh  
30th June  
1965

3/- stamp duty

Principal Sum: £60-0-0 (Sixty Pounds)  
Being cash advanced.  
Interest 12% per annum.  
Dated 30th June, 1965

20

73263

UPON DEMAND I the undersigned GUDULAL (son of Ram Karan Singh) and CHANDRIKA PRASAD (son of Gudulal) both of Tabia, Labasa Cultivator and driver jointly and severally promise to pay to GULJARA SINGH (son of Hari Singh) of Tabia, Labasa Licensed Money Lender or order the sum of £60-0-0 (Sixty Pounds) being cash advanced this day to us together with interest thereon at the rate of 12% per annum from the date hereof. Value received. Payable at Labasa.

30

I CERTIFY that I read over the contents hereof in the Hindu-stani language to the borrowers who appeared to understand the meaning of the same. The said sum of £60-0-0 was paid by the lender to the borrowers in my presence.

Sgd. GUDU LAL  
Sgd. CHANDRIKA PRASAD

40

Sgd. K. CHAUHAN  
Solicitor, Labasa.

EXHIBITS

P1(F)  
I.O.U. £39  
Gudulal and  
Chandrika  
Prasad to  
Guljara Singh  
  
28th April  
1964

EXHIBITS

P1(F)  
I.O.U. £39 GUDULAL AND  
CHANDRIKA PRASAD TO GULJARA  
SINGH - 28th April 1964

2/- stamp duty

Principal Sum: £39-0-0 (Thirty-Nine Pounds)  
Being the cash advanced  
Interest 12% per annum.  
Dated 28th April, 1964

10

68177

UPON DEMAND we the undersigned GUDU LAL (son of Ram Karan Singh) and CHANDRIKA PRASAD (son of Gudu Lal) both of Tabia, Labasa Cultivator jointly and severally promise to pay to GULJARA SINGH (son of Hari Singh) of Tabia, Labasa Licensed Moneylender or order the sum of £39-0-0 (Thirty Nine Pounds) Being cash advanced this day to us together with interest thereon at the rate of 12% per annum from the date hereof. Value received. Payable at Labasa.

20

I CERTIFY that I read over the contents hereof in the Hindustani language to the borrowers who appeared to understand the meaning of the same. The said sum of £39-0-0 was paid by the lender to the borrowers in my presence.

) Sgd. GUDU LAL  
) Sgd. CHANDRIKA  
) PRASAD

Sgd. C.Z. PATEL  
JUSTICE OF THE PEACE NORTHERN

30

EXHIBITS

P1(G)

I.O.U. £25 GUDULAL AND  
CHANDRIKA PRASAD TO GULJARA  
SINGH - 29th April 1964

EXHIBITS

P1(G)

I.O.U. £25  
Gudulal and  
Chandrika  
Prasad to  
Guljara Singh

29th April  
1964

Principal sum: £25-0-0 )Twenty-Five Pounds)  
Being cash advanced.  
Interest 12% per annum.  
DATED 29th April, 1964 68178

10 UPON DEMAND We, the undersigned GUDU LAL (son of Ram Karan Singh) and CHANDRIKA PRASAD (son of Gudu Lal) both of Tabia, Labasa Cultivators jointly and severally promise to pay to GULJARA SINGH (son of Hari Singh) of Tabia, Labasa Licensed Moneylender or order the sum of £25.-0-0 (Twenty-Five Pounds) Being cash advanced this day to us together with interest thereon at the rate of 12% per annum from the date hereof. Value received. Payable at Labasa.

20 I CERTIFY that I read over the contents hereof in the Hindu-stani language to the borrowers who appeared to understand the meaning of the same. The said sum of £25-0-0 was paid by the lender to the borrowers in my presence. ) Sgd. GUDU LAL ) Sgd. CHANDRIKA PRASAD )

Sgd. GYAN SINGH  
JUSTICE OF THE PEACE NORTHERN

EXHIBITS

EXHIBITS

P1(H)  
I.O.U. £153  
Gudulal and  
Chandrika  
Prasad to  
Guljara Singh  
3rd July 1964

P1(H)  
I.O.U. £153 GUDULAL AND  
CHANDRIKA PRASAD TO GULJARA  
SINGH - 3rd July 1964

7/- stamp duty

Principal Sum: £153-0-0 (One hundred and Fifty-  
three Pounds)

Being Cash advanced.  
Interest 12% per annum.  
DATED 3rd July, 1964

10

68406

UPON DEMAND We, the undersigned GUDULAL (son of  
Ramkaran Singh) and CHANDRIKA PRASAD (son of  
Gudulal) both of Tabia, Labasa, cultivators  
jointly and severally promise to pay GULJARA SINGH  
(son of Hari Singh) of Tabia, Labasa Licensed  
Moneylender or order the sum of £153-0-0 (One  
hundred and fifty-three pounds) being cash  
advanced this day to us, together with interest  
thereon at the rate of 12% per annum from the  
date hereof. Value received. Payable at Labasa.

20

I CERTIFY that I read over the  
contents hereof in the Hindu-  
stani language to the borrowers  
who appeared to understand the  
meaning of the same. The said  
sum of £153-0-0 was paid by the  
lender to the borrowers in my  
presence.

} GUDULAL (his left  
thumb mark)  
Sgd. CHANDRIKA  
PRASAD

30

Sgd. K. CHAUHAN  
Solicitor, Labasa.

EXHIBITS

Pl(I)

ACKNOWLEDGEMENT CHANDRIKA PRASAD TO GULJARA SINGH 5th July 1967

EXHIBITS

Pl(I)

Acknowledgment Chandrika Prasad to Guljara Singh 5th July 1967

MONEYLENDERS ORDINANCE

BORROWER: CHANDRIKA PRASAD s/o Gudulal of Tabia, Labasa, Cultivator

10 LENDER: GULJARA SINGH s/o Hari Singh of Tabia, Labasa, Licensed Moneylender

DATE OF LOAN: 5th July, 1967

PRINCIPAL SUM: The sum of £394-0-0 owing under divers Promissory Notes and the sum of £290-0-0 this day advanced.

INTEREST: 12% per annum

20 TERMS OF CONTRACT: To secure the repayment of the said sum and the interest to accrue the Borrower will give to the Lender a Crop Lien to secure the repayment of the sum of £684-0-0 a form of Crop Lien is hereunto annexed and shall be deemed to be part of this Memorandum.

DATED at Labasa this 5th day of July, 1967.

30 SIGNED by the said CHANDRIKA PRASAD ) after the contents hereof had been ) first read over and explained to ) Sgd. ) him in the Hindustani language and ) CHANDRIKA PRASAD ) he appeared fully to understand the ) meaning of the same. )

Sgd. K. CHAUHAN  
Solicitor, Labasa

SIGNED by the said GULJARA SINGH ) after the contents hereof had been ) first read over and explained to ) GULJARA SINGH ) him in the Hindustani language and ) (his left Thumb ) he appeared fully to understand the ) mark) x ) same in my presence. )

40 Sgd. K. CHAUHAN  
Solicitor, Labasa



EXHIBITS

Pl(I)  
Acknowledgment  
Chandrika Prasad  
to Guljara Singh  
5th July 1967  
(continued)

The Borrower hereby acknowledges:-

- (a) that the Memorandum was signed by him before acknowledging the indebtedness of the sum of £394-0-0 owing under the divers Promissory Notes and receiving the sum of £290-0-0 in cash.
- (b) That a copy of the Memorandum authenticated by the Lender was received by him before the indebtedness of the sum of £394-0-0 was acknowledged and the sum of £290-0-0 advanced 10
- (c) That the Crop Lien referred to in the Memorandum was executed by him after they had signed the Memorandum;
- (d) the indebtedness of the sum of £394-0-0 was acknowledged and the sum of £290-0-0 was paid.

DATED at Labasa this 5th day of July, 1967.

SIGNED by the said CHANDRIKA }  
PRASAD after interpretation } Sgd. CHANDRIKA 20  
in my presence: } PRASAD

Sgd. K. CHAUHAN  
Solicitor, Labasa

EXHIBITS

P1(J)

CROP LIEN CHANDRIKA PRASAD  
TO GULJARA SINGH - 5th  
July 1967

EXHIBITS

P1(J)

Crop Lien  
Chandrika  
Prasad to  
Guljara  
Singh

5th July  
1967

17944 SOUTH PACIFIC SUGAR MILLS  
STAMP DUTY LIMITED LABASA  
FIJI NOTED 1.9.67  
FIVE SHILLINGS Register of Liens Book  
10 COPY ORIGINAL Folio  
STAMPED WITH £2.0.0

CROP LIEN

I, CHANDRIKA PRASAD (father's name Gudulal) of  
Tabia, Labasa, Cultivator (hereinafter called "the  
Lienor") IN CONSIDERATION of GULJARA SINGH (f/n  
Hari Singh) of Tabia, Labasa, Licensed Moneylender  
(hereinafter called "the Lienee") agreeing at my  
request to refrain from instituting legal proceed-  
ings against me the Lienor and my father GUDU LAL  
20 s/o Ram Karan Singh for the recovery of the sum of  
£394-0-0 being principal and interest due and owing  
under divers promissory notes namely P.N.No.68406  
dated 3/7/64, P.N.68178 dated 29/4/64, P.N.68177  
dated 28/4/64, P.N.73263 dated 30/6/65, P.N.No.68422  
dated 30/1/64 and P.N.No.72923 dated 30/4/65 and  
P.N.No.72940 dated 24/5/65 AND IN CONSIDERATION of  
the Lienee agreeing at my request to absolve the  
said GUDULAL'S liability under the said promissory  
Notes in consideration of entering into these  
30 presents and the lienor undertaking the sole  
responsibility for the repayment of the said debt  
AND IN CONSIDERATION of the sum of £290-0-0 this  
day advanced to the Lienor the receipt of which sum  
the Lienor doth hereby admit and acknowledge.  
And in consideration of such further advances as  
the Lienee may in his absolute discretion make to  
me (including in the term "further advances" all  
moneys owing or indebtedness incurred by me to the  
Lienee on any account whatsoever) HEREBY GIVE to  
40 the Lienee a lien on crop or crops of sugar cane  
growing or to be grown on land situate in the Colony  
of Fiji and described as follows :-

Title	Number	Description	Province or Island	District or Town	AREA	
					A.	R. P.
N.L.	4/9/1135	DELAIVUILOGI CONTRACT NO.4020	Macuata	Labasa	6	- -
		WAILEVU				

EXHIBITS

UP TO the 4th day of July 1969 THIS LIEN IS  
SUBJECT TO THE FOLLOWING CONDITIONS:

Pl(J)

Crop Lien  
Chandrika  
Prasad to  
Guljara  
Singh

5th July  
1967

(continued)

C.P.  
K.C.

1. The Lienor agrees that this lien shall be a security to the Lienee to the extent of the whole of such advance or indebtedness as aforesaid and for any further advance or advances which the Lienee in his discretion may make to the Lienor together with interest thereon at the rate of £12-0-0 per centum per annum as to the said advance of £ from the date hereof and as to such further advance or advances from the date or respective dates on which such indebtedness arises until repayment thereof.

10

2. The Lienor agree to pay to the Lienee the said sum of £684-0-0 and further advances or so much thereof as remains unpaid on demand made by the Lienee and until full payment thereof to pay interest on the amount from time to time owing at the rate aforesaid.

3. In the event of the said crop or crops of Sugar cane not being mature at the date of the expiry of this lien or being destroyed or injured before the realization thereof or before the moneys and interest hereby secured shall have been paid to the Lienee or in the event of the Lienor not having paid in full on or before the date of expiry of this lien the amount of his indebtedness to the Lienee the Lienor hereby agree to give such further and proper lien or mortgage or renewal or extension of the present lien or other security as the Lienee may require for securing the payment of all moneys and interest due to the Lienee.

20

30

Registered on 11 JUL 1967  
at 11.30 a.m.  
See Register of Liens Book  
67 Folio 1308  
L.S.

LODGED BY  
Messrs. Cromptons,  
Solicitors  
Suva.

Sgd.  
Registrar-General

Agents for:  
K.Chauhan  
Solicitor, Labasa  
Date.....

40

Fees Paid

Registrar-General

4. The Lienor agree that he will keep the whole of the said land or such part thereof as is suitable therefor cultivated in a proper and husbandlike manner.

5. The Lienor hereby declares that he has given no other lien on the said crop or crops for the period covered by this lien.

10 6. The Lienor hereby agree to deposit with the Lienee all documents of title to the said lands by way of an equitable mortgage for further securing said indebtedness and further advance or advances and interest.

7. In the event of any rents being in arrears for the land on which the said crops are growing or to grow the Lienee may pay the same and the rent so paid shall be a debt due by the Lienor to the Lienee and shall be secured by this lien and bear interest at the rate aforesaid.

20 8. It is hereby agreed that nothing herein contained shall take away, prejudice or affect the rights powers remedies claims and demands at law or in equity of the Lienee by reason of his taking or having taken any further or other security or securities for any moneys expressed or intended to be hereby secured.

30 9. It is further agreed and declared that this agreement shall be a running and continuing security notwithstanding any settlement of account or other matter or thing whatsoever until a final discharge hereof shall have been given to the Lienor.

10. The presentation of this lien to the South Pacific Sugar Mills Ltd. at or to any other Company firm or person shall be full authority for the said Company or for such other Company firm or person to pay the Lienee the whole or any part of the moneys hereby secured out of the proceeds of the said crop or crops.

40 ~~11. And lastly it is hereby agreed and declared that this lien is collateral to a given by the Lienor to the Lienee on the day of 19~~

EXHIBITS

Pl(J)  
Crop Lien  
Chandrika  
Prasad to  
Guljara  
Singh

5th July  
1967

(continued)

IN WITNESS whereof the said CHANDRIKA )  
PRASAD has hereunto set his hand this ) Sgd.  
5th day of July 1967 in my presence ) CHANDRIKA  
and I hereby certify that I have ) PRASAD  
translated the above agreement to the )  
said CHANDRIKA PRASAD f/n Gudulal of )

EXHIBITS

P1(J)  
Crop Lien  
Chandrika  
Prasad to  
Guljara Singh  
5th July 1967  
(continued)

Tabia, Labasa, Cultivator and )  
he appeared to me to fully )  
understand the same )

.....  
Signature or left thumb-  
mark of Lienor

CERTIFIED TRUE COPY

Sgd. K. CHAUHAN  
A Commissioner of the Supreme  
Court for taking Affidavits.

Sgd. K. CHAUHAN 10  
Solicitor, Labasa

P1(K)  
I.O.U. £30  
Chandrika  
Prasad to  
Guljara Singh  
14th December  
1967

EXHIBITS

P1(K)

I.O.U. £30 CHANDRIKA PRASAD  
TO GULJARA SINGH - 14th  
December 1967

2/- stamp cancelled

Principal sum: £30-0-0 (Thirty Pounds)  
Being cash advanced this day to me. Interest 20  
12% per annum.  
Dated 14th December, 1967.

83882

UPON DEMAND I the undersigned CHANDRIKA PRASAD  
(son of Gudulal) of Tabia, Labasa, Cultivator  
promise to pay to GULJARA SINGH (son of Hari  
Singh) of Tabia, Labasa, Licensed Moneylender  
or order the sum of £30-0-0 (Thirty Pounds)  
Being cash advanced this day to me together with  
interest thereon at the rate of 12% per annum  
from the date hereof. Value received, Payable 30  
at Labasa. C.P.  
K.C.

I CERTIFY that I read over the )  
contents hereof in the Hindustani ) Sgd. CHANDRIKA  
language to the borrower who ) PRASAD  
appeared to understand the meaning )  
of the same. The said sum of )  
£30-0-0 was paid by the lender to )  
the borrower in my presence. )

Sgd. K. CHAUHAN  
SOLICITOR, LABASA 40

EXHIBITS

P1(L)

I.O.U. £45 CHANDRIKA PRASAD  
TO GULJARA SINGH - 26th July  
1967

EXHIBITS

P1(L)

I.O.U. £45  
Chandrika  
Prasad to  
Guljara Singh  
26th July 1967

2/- stamp cancelled

Principal sum: £45-0-0 (Forty Five Pounds)  
Being cash advanced.  
Interest 12% per annum  
Dated 26th July, 1967

10

82242

UPON DEMAND I the undersigned CHANDRIKA PRASAD (son of Gudulal) of Tabia, Labasa Driver promise to pay to GULJARA SINGH (sone of Hari Singh) of Tabia, Labasa Licensed Money Lender or order the sum of £45-0-0 (Forty Five Pounds) being cash advanced this day to me together with interest thereon at the rate of 12% per annum the date hereof. Value received. Payable at Labasa.

20

I CERTIFY that I read over the contents hereof in the Hindustani language to the borrower who appeared to understand the meaning of the same. The said sum of £45-0-0 was paid by the lender to the borrower in my presence.

Sgd. CHANDRIKA PRASAD

Sgd. K. Chauhan  
Solicitor, Labasa

EXHIBITS

P1(M)

I.O.U. £25 CHANDRIKA PRASAD  
TO GULJARA SINGH - 19th September  
1967

P1(M)

I.O.U. £25  
Chandrika  
Prasad to  
Guljara Singh  
19th September  
1967

1/- stamp duty

Principal sum: £25-0-0 (Twenty five pounds)  
Being cash advanced  
Interest 12% p.a.  
Dated 19th September, 1967

30

83860

40

UPON DEMAND I, the undersigned CHANDRIKA PRASAD

EXHIBITS

P1(M)  
I.O.U. £25  
Chandrika  
Prasad to  
Guljara Singh  
19th September  
1967

(son of Gudulal) of Tabia, Labasa, Cultivator  
promise to pay to GULJARA SINGH (son of Hari  
Singh) of Tabia, Labasa, Licensed Moneylender  
or order the sum of £25-0-0 (Twenty five pounds)  
being cash advanced this day to me together  
with interest thereon at the rate of 12% per  
annum from the date hereof. Value received.  
Payable at Labasa.

(continued)

I CERTIFY that I read over the  
contents hereof in the Hindustani  
language to the borrower who  
appeared to understand the meaning  
of the same. The said sum of  
£25-0-0 was paid by the lender  
to the borrower in my presence.

Sgd. CHANDRIKA  
PRASAD

10

Sgd. K. CHAUHAN

P1(N)  
Contract,  
Chandrika  
Prasad and  
Guljara Singh  
22nd February  
1968

EXHIBITS

P1(N)

CONTRACT, CHANDRIKA PRASAD  
AND GULJARA SINGH - 22nd  
February 1968

20

MEMORANDUM OF CONTRACT  
MONEYLENDERS ORDINANCE

BORROWER: CHANDRIKA PRASAD s/o Gudhulal  
of Tabia, Labasa, Cultivator  
LENDER: GULJARA SINGH s/o Hari Singh of  
Tabia, Labasa, Licensed Moneylender  
DATE OF LOAN: 22nd day of February 1968

PRINCIPAL SUM: The sum of £684.0.0 (SIX HUNDRED  
AND EIGHTY-FOUR POUNDS) under a  
certain Crop Lien Book 67 Folio  
1308 dated 5th July, 1967, the  
sum of £70.0.0 (SEVENTY POUNDS)  
under certain Promissory Notes  
Nos. 83860 of 19/9/67 and 82242  
of 26/7/67 and the sum of £150.0.0  
(ONE HUNDRED AND FIFTY POUNDS)  
C.P. lent and advanced to me by the said  
GULJARA SINGH Guljara Singh on the 16th November  
(His left 1967 the sum of £30.0.0 under  
Thumb Mark)X P/N No. 83882 dated 14/12/67  
K.C.

30

40

10 (the indebtedness whereof I hereby admit and acknowledge) AND IN CONSIDERATION of the sum of £463.9.0 (FOUR HUNDRED AND SIXTY THREE POUNDS AND NINE SHILLINGS) this day advanced to me by the said Guljara Singh making the total advance to me in the sum of £1397.9.0 (ONE THOUSAND THREE HUNDRED AND NINETY SEVEN POUNDS AND NINE SHILLINGS)

EXHIBITS  
P1(N)  
Contract,  
Chandrika  
Prasad and  
Guljara Singh  
22nd February  
1968  
(continued)

INTEREST: 12% per annum

TERMS OF CONTRACT: To secure the repayment of the said sum and the interest to accrue the Borrower will give to the lender a mortgage to secure the repayment of the sum of £1397.9.0 (ONE THOUSAND THREE HUNDRED AND NINETY SEVEN POUNDS AND NINE SHILLINGS) a form of Mortgage is hereto annexed and shall be deemed to be part of this Memorandum.

20

DATED at Labasa this 22nd day of February, 1968.

30 SIGNED by the said CHANDRIKA PRASAD after the contents hereof had been first read over and explained to him in the Hindustani language and he appeared fully to understand the meaning of the same in my presence. ) Sgd. CHANDRIKA PRASAD

Sgd. K. CHAUHAN  
Solicitor, Labasa

40 SIGNED by the said GULJARA SINGH after the contents hereof had been first read over and explained to him in the Hindustani language and he appeared fully to understand the same in my presence ) GULJARA SINGH (His Left Thumb Mark) x

Sgd. K. CHAUHAN  
Solicitor, Labasa

The Borrower hereby acknowledges :-

- (a) That the Memorandum was signed by him before acknowledgment of the indebtedness of the sum of £934.0.0. owing under Crop Lien book 67/1308 and promissory notes numbers 82242 dated 26th July, 1967 and 83860 dated 19th September, 1967 and £150 lent in advance



EXHIBITS

P1(N)  
Contract,  
Chandrika  
Prasad and  
Guljara Singh  
22nd February  
1968  
(continued)

to him on the 16th November, 1967 and  
receivin the sum of £463.9.0 in cash.

- (b) That a copy of the Memorandum authenticated by the lender was received by him before the indebtedness of the sum of £934. was acknowledged and the sum of £463.9.0 was advanced.
- (c) That the Mortgage referred to in the Memorandum was executed by him after they had signed the Memorandum.
- (d) The indebtedness of the sum of £934.0.0. was acknowledged and the sum of £463.9.0. was paid. Dated at Labasa this 22/2/1968.

10

P1(O)  
Mortgage,  
Chandrika  
Prasad to  
Guljara Singh  
22nd February  
1968

EXHIBITS

P1(O)  
MORTGAGE, CHANDRIKA PRASAD  
TO GULJARA SINGH - 22nd  
February 1968

20

8067  
FIJI STAMP DUTY  
THREE POUNDS  
TEN SHILLINGS

FIJI

No.....

M O R T G A G E  
MUST BE IN DUPLICATE

29468  
FIJI ONE POUND

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

30

I. CHANDRIKA PRASAD (father's name Gudulal) of Tabia, Labasa in the Colony of Fiji Cultivator hereinafter called the mortgagor being registered as Proprietor subject however to such Mortgages and encumbrances as are notified by Memorandum underwritten or endorsed hereon of the piece of land described as follows :-

EXHIBITS

P1(0)  
Mortgage,  
Chandrika  
Prasad to  
Guljara Singh

22nd February  
1968

(continued)

10	Instru- ment of		Descrip- tion	Province District		AREA A. R. P.	Undivided Share
	Title	Number		or Island	or Town		
	N.L.	4/9/1135	DELAIVUI- LOQI	MACUATA	SASA	11 $\frac{3}{4}$ - -	Whole

20 C.P. IN CONSIDERATION of the sum of £684-0-0 (SIX HUNDRED K.C. AND EIGHTY FOUR POUNDS) owing by me to GULJARA SINGH (f/n Hari Singh) of Tabia, Labasa Licensed Money-lender (hereinafter called "the Mortgagee") under a certain Crop Lien Book 67 Folio 1308 dated 5th July, 1967, the sum of £100.0.0 (One hundred pounds) under certain promissory notes numbers 83860 dated 19th September, 1967, 82242 dated 26th July, 1967 and 83882 dated 14th December, 1967 and the sum of £150.0.0 (ONE HUNDRED AND FIFTY POUNDS) lent and advanced to me by the said Guljara Singh on the 16th November, 1967 the indebtedness whereof I hereby admit and acknowledge AND IN CONSIDERATION of the sum of £463.9.0 (FOUR HUNDRED AND SIXTY THREE POUNDS AND NINE SHILLINGS) this day advanced to me by the said Guljara Singh making in the total advance to me in the sum of £1397.9.0 (ONE THOUSAND THREE HUNDRED AND NINETY SEVEN POUNDS AND NINE SHILLINGS) the receipt of which sum the mortgagor hereby acknowledges doth hereby covenant with the mortgagee

30 FIRSTLY that the mortgagor will pay to the mortgagee C.P. the above sum of ONE THOUSAND THREE HUNDRED AND K.C. NINETY SEVEN POUNDS AND NINE SHILLINGS UPON DEMAND

C.P. SECONDLY that the mortgagor will pay interest on K.C. the said sum at the rate of twelve pounds (£12.0.0.) by the £100 in the year as follows :-

40 APPROVED BY N.L.T. BOARD  
21 MAR 1968  
Sgd.  
Secretary

Lodged by Messrs.  
Cromptons, Solicitors  
SUVA  
Agents for:  
K. Chauhan, Solicitor,  
LABASA

EXHIBITS

P1(0)  
Mortgage,  
Chandrika  
Prasad to  
Guljara Singh  
22nd February  
1968  
(continued)

THIRDLY The Mortgagor will continue to pay interest under this mortgage after the expiry of this mortgage should the principal moneys hereby secured be not paid and any interest accruing due after such term shall be deemed to be secured by this mortgage.

FOURTHLY The Mortgagor further agree that all interest unpaid by at due date shall be added to the principal sum and carry interest after the rate aforesaid provided always that nothing herein contained in this paragraph shall take away the powers of foreclosure for non-payment of interest.

10

FIFTHLY The Mortgagee shall have the right to hold the title deeds of the lands hereby mortgaged until all sums due by to the said Mortgagee are fully paid up with interest.

SIXTHLY In the event of foreclosure and sale under this security if the property hereby mortgaged shall fail to realise the amount due for principal and interest at such date together with the cost charges and expenses of such foreclosure the Mortgagor will forthwith pay to the Mortgagee such balance of principal and interest and cost charges and expenses as shall be required to pay the same in full.

20

SEVENTHLY It is hereby agreed that the term "one calendar month" referred to in Section 61 of the Land (Transfer and Registration) Ordinance (Cap.136) shall for all purposes of this security be reduced to "seven days".

30

EIGHTLY The Mortgagor will insure and keep insured against fire during the continuance of this mortgage in the name of the Mortgagee the buildings erected or which may hereafter be erected on the lands hereby mortgaged in their full insurable value in some insurance Company to be approved by the Mortgagee and will punctually pay the premiums thereon when due and will hand the receipts for same to the Mortgagee immediately upon the issue thereof and the Mortgagor agree that in the event of failing to pay the said premiums or any of them the Mortgagee may in absolute discretion pay the same and all moneys so paid by the Mortgagee shall be covered by this security and bear interest at the rate aforesaid until repaid to the Mortgagee.

40

NINTHLY The Mortgagor will at all times during

50

the continuance of this security duly and punctually pay all rents rates taxes charges duties assessments and all other impositions whatsoever now charged or which may hereafter be charged upon the said mortgaged premises or any part thereof or upon the owner or occupier thereof in respect thereof or any part thereof and in case the Mortgagor shall at any time fail to keep the said premises in good tenantable repair and order or to duly or punctually pay all such rent rates taxes charges duties assessments or other impositions as aforesaid it shall be lawful for but not obligatory upon the Mortgagee to execute pay effect and keep up all such repairs rates duties rents assessments and impositions as aforesaid and all moneys paid in respect thereof shall be debited and charged to the Mortgagor and bear interest after the rate aforesaid from the date of payment and shall immediately thereupon be and become payable by the Mortgagor to the Mortgagee and shall until repayment be covered by this mortgage.

10

20

and for the better securing to the mortgagee the repayment in manner aforesaid of the principal sum and interest, the mortgagor hereby MORTGAGES to the mortgagee the land above described.

30

IN WITNESS whereof I/we have hereto signed my/our name this 22nd day of February 1968

Sgd. Chandrika Prasad

Signature or left thumb mark of the Mortgagor

C.P.

K.C.

40

THE signature by mark of CHANDRIKA PRASAD was made in my presence and I verily believe that such signature is/are of the proper handwriting/left thumb mark of the person described as CHANDRIKA PRASAD (Father's name Gudulal) of Tabia, Labasa in the Colony of Fiji, Cultivator the Mortgagor and I certify that I read over and explained the contents hereof to the Mortgagor in the Hindustani language and the Mortgagor appeared fully to understand the meaning and effect thereof.

Sgd. K.Chauhan  
Solicitor, Labasa

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

Sgd. K.Chauhan  
Solicitor for the Mortgagee

EXHIBITS

P1(O)

Mortgage,  
Chandrika  
Prasad to  
Guljara Singh

22nd February  
1968

(continued)

EXHIBITS

MEMORANDUM OF MORTGAGES AND ENCUMBRANCES, ETC.

P1(0)  
Mortgage,  
Chandrika  
Prasad to  
Guljara Singh  
22nd February  
1968

(continued)

GULJARA  
SINGH  
x(H.L.T.M)  
K.C.

MORTGAGEE'S UNDERTAKING

I, the undersigned GULJARA SINGH (father's name Hari Singh) of Tabia, Labasa in the Colony of Fiji Licensed Moneylender the within described Mortgagee HEREBY ACKNOWLEDGE AND UNDERTAKE that in the event of its becoming it necessary to exercise the powers of sale under the provisions of section 63 of the Land (Transfer and Registration) Ordinance Cap.136 and to grant any tenancy or lease under the said powers contained in the within mortgage and such transfer tenancy or lease in exercise of any such power of sale will require the prior consent of the Native Land Trust Board, Suva in writing as Lessor of the within described Native Lease No. 4/9/1135.

10

DATED at Labasa this 22nd day of February, 1968

Witness to signature  
after interpretation

GULJARA SINGH  
(Left Thumb Mark)

20

Sgd. K.Chauhan  
Solicitor, Labasa

x

FORM OF DECLARATION BY ATTESTING WITNESS

Appeared before me at.....the.....  
day of.....One thousand nine hundred  
and.....

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

30

.....  
the person signing the same, and whose signature  
the said.....  
attested, and that the name purporting to be, the  
signature of the said .....  
is his own handwriting and that he is the person  
therein described as .....

of .....  
THE WITHIN WRITTEN MORTGAGE IS HEREBY WHOLLY  
DISCHARGED

IN WITNESS whereof I/we have hereto signed  
my/our name this day of 19

40

.....  
Signature or left thumb mark  
of the Mortgagee

10 THE signature by mark of  
 was made in my present and I verily believe  
 that such signature is/are of the proper  
 handwriting/left thumb mark of the person  
 described as  
 the Mortgagee and I certify that I read over  
 and explained the contents hereof to the  
 Mortgagee in the language and the  
 Mortgagee appeared fully to understand the  
 meaning and effect thereof.

EXHIBITS  
 P1(O)  
 Mortgage,  
 Chandrika  
 Prasad to  
 Guljara Singh  
 22nd February  
 1968  
 (continued)

.....

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

.....  
 Solicitor for the Mortgagor

EXHIBITS  
 P1(P)  
 STATEMENT OF ACCOUNT  
 10th April 1970

P1(P)  
 Statement of  
 Account  
 10th April  
 1970

STATEMENT OF ACCOUNT  
TABLE 1 PRINCIPAL & INTEREST

20	PRINCIPAL	DATE LENT	RATE PER CENTUM PER ANNUM OR THE AMOUNT OF INTEREST
	\$ 78.00	28. 4.64	12 per centum per annum
	50.00	29. 4.64	" " " " "
	80.00	30. 7.64	" " " " "
	306.00	3. 7.64	" " " " "
	76.00	30. 4.65	" " " " "
	50.00	24.5. 65	" " " " "
	120.00	30. 6.65	" " " " "
30	580.00	5. 7.67	" " " " "
	28.00	5. 7.67	" " " " "
	90.00	26. 7.67	" " " " "
	50.00	19. 9.67	" " " " "
	300.00	16.11.67	" " " " "
	60.00	14.12.67	" " " " "
	926.90	22. 2.68	" " " " "
	80.00	28. 5.68	" " " " "
	106.00	1.11.68	" " " " "

EXHIBITS

P1(P)  
Statement  
of Account  
10th April  
1970  
(continued)

TABLE 2 - REPAYMENT

	AMOUNTS REPAID	DATE
1.	\$36.00	5.10.67
2.	13.61	1.11.67
3.	22.00	27.12.67
4.	14.00	8. 8.68
5.	18.00	17. 2.69
6.	67.00	25. 6.69
7.	12.00	26.11.69

TABLE 3 - AMOUNT OF ARREARS

10

PRINCIPAL	DATE DUE	INTEREST	DATE DUE
\$2980.90	On Demand	\$508.94	On Demand

DATED at Labasa this 10th day of April, 1970

GULJARA SINGH (His left  
thumb mark)

Witness to signature  
after interpretation.

Sgd.

E & O.E.

EXHIBITS

P1(Q)

I.O.U. £40 CHANDRIKA  
PRASAD TO GULJARA SINGH  
28th May 1968

EXHIBITS

P1(Q)

I.O.U. £40  
Chandrika  
Prasad to  
Guljara Singh  
28th May 1968

PRINCIPAL SUM: £40.0.0 (FORTY POUNDS)  
Being Cash advanced.  
Interest 12% per annum.  
Dated 28th May, 1968.

10 UPON DEMAND I the undersigned CHANDRIKA PRASAD  
(son of Gudu Lal) of Tambia, Labasa Cultivator  
promise to pay to GULJARA SINGH (son of Hari  
Singh) of Tambia, Labasa Licensed Moneylender  
or order sum of £40.0.0 (FORTY POUNDS) being  
cash advanced this day to me, together with  
interest at the rate of 12% per annum from the  
date hereof. Value Received. Payable at Labasa.

20 I CERTIFY that I read over the contents hereof in the Hindu-  
stani language to the borrower who appeared to understand the  
meaning of the same. The said sum of £40.0.0 was paid by the  
lender to the borrower in my presence. } Sgd. Chandrika  
Prasad

Sgd. K.Chauhan  
Solicitor, Labasa.

EXHIBITS

P1(R)

I.O.U. £53 CHANDRIKA  
PRASAD TO GULJARA SINGH  
1st November 1968

P1(R)  
I.O.U. £53  
Chandrika  
Prasad to  
Guljara Singh  
1st November  
1968

30 PRINCIPAL SUM: £53.0.0 (FIFTY THREE POUNDS)  
Being Cash advance.  
Interest 12% per annum.  
Dated 1st November, 1968

40 UPON DEMAND I, the undersigned CHANDRIKA PRASAD  
(son of Gudu Lal) of Tabia, Labasa, Cultivator  
promise to pay to GULJARA SINGH (son of Hari Singh)  
of Tabia, Labasa Licensed Moneylender or order  
sum of £53.0.0 (FIFTY THREE POUNDS) being cash  
advanced this day to me together with interest  
thereon at the rate of 12% per annum from the



EXHIBITS

P.(R)

I.O.U. £53  
Chandrika  
Prasad to  
Guljara Singh  
1st November  
1968  
(continued)

date hereof. Value received. Payable at  
Labasa.

I CERTIFY that I read over the  
contents hereof in the Hindu-  
stani language to the borrower  
who appeared to understand the  
meaning of the same. The said  
sum of £53.0.0 was paid by the  
lender to the borrower in my  
presence.

} Sgd. Chandrika  
Prasad

10

Sgd. K.Chauhan  
Solicitor, Labasa.

P.2  
Letter,  
Gibson & Co.  
to Native  
Land Trust  
Board  
2nd June 1970

EXHIBITS

P2

LETTER, GIBSON & CO.  
TO NATIVE LAND TRUST  
BOARD - 2nd June 1970

GIBSON & COMPANY  
Barristers & Solicitors

LABASA,  
Island of Vanualova  
Fiji

20

2nd June, 1970

The Manager,  
Native Land Trust Board,  
SUVA.

Dear Sir,

re: Chandrika Prasad f/n Gudulal  
N.L.Delaivuiloqi - 4/9/1135

We are acting for the abovenamed in an  
action to be instituted in the Supreme Court  
of Fiji over a mortgage given by our client  
to one Guljara Singh father's name Hari Singh  
of Tabia, Labasa, Licensed Moneylender.

30

We understand that the said Guljara Singh  
as Mortgagee wants to sell the said land.

In the circumstances and in view of the  
Supreme Court action, we request you not to  
give your consent until such time as the case  
is over.

Your advise herein at your earliest  
convenience will be highly appreciated.

40

Yours faithfully,  
Gibson & Company  
Per: Sgd. M.Sadiq

EXHIBITS

P2

Letter, Gibson  
& Co. to  
Native Land  
Trust Board  
2nd June 1970  
(continued)

EXHIBITS

P3

LETTER, NATIVE LAND TRUST  
BOARD TO GIBSON & CO.  
24th June 1970

---

P3

Letter, Native  
Land Trust  
Board to  
Gibson & Co.  
24th June 1970

10

NATIVE LAND TRUST BOARD  
SUVA, FIJI

24th June, 1970

In reply please  
quote: 4/9/1135

Messrs. Gibson & Co.  
Barristers and Solicitors,  
P.O.Box 58,  
LABASA

Gentlemen,

20

re: Chandrika Prasad f/n Gudulal  
N.L. Delaivuiloqi

I have to acknowledge receipt of your  
letter of the 2nd June concerning the above  
and am to inform you that the contents thereof  
have been noted and placed on record.

Yours faithfully,  
Sgd. A.D.Naigulevu  
(A.D.NAIGULEVU)  
DEPUTY MANAGER

A/ak

EXHIBITS

P4  
Memorandum  
of Lease  
8th March  
1971

EXHIBITS

P4  
MEMORANDUM OF LEASE  
8th March 1971

NLTB 4/9/1135

F I J I

MEMORANDUM OF LEASE  
(Class A - Agricultural)

NATIVE LAND (LEASES AND LICENCES)  
REGULATIONS

10

(This Lease must be in triplicate)

THE NATIVE LAND TRUST BOARD (hereinafter called the lessor) hereby leases to SHIU PRASAD Father's name Suchit Bhagat BAIJ NATH Father's name Hardeo and CHANDRIKA PRASAD Father's name Halka all of Tabia, Labasa, Cultivators, as Trustees TABIA SANATAN DHARAM SCHOOL COMMITTEE (hereinafter called the lessee) to be held by the lessee as tenant for the space of thirty (30) years commencing on the first day of July 1965 at the yearly rental of \$92-0-0 (Ninety-two pounds) to be paid to the Native Land Trust Board in Suva half yearly in advance in the months of January and July in every year, ALL THAT PIECE OR PARCEL OF LAND described as follows :

20

Name of land	Tikina	Province	Area		
			A.	R.	P.
DELAIVUNILOQI	Labasa	Nacuata	11	2	16

owned by the Mataqali Nadogo be the area a little more or less and contained within the boundaries more particularly delineated and marked on the plan hereto annexed and coloured yellow excepting and reserving out of this demise all mines minerals and mineral substance, including mineral oil, within or under the said piece or parcel of land together with full power for the persons entitled to such mines minerals and mineral substances, including mineral oil, to work and get the same either by entry on the surface or by underground working subject always to the right of the Crown to take all gold, silver, precious stones, coal and mineral oil.

30

40

This lease is subject to the following conditions, restrictions and covenants :-

EXHIBITS

P4

Memorandum  
of Lease

8th March  
1971

(continued)

(1) The rent shall be subject to reassessment in the years 1990 to a maximum not exceeding six (6) per centum of the unimproved value of the land.

10 (2) It shall at all times be lawful for the lessor to resume without compensation any part of the said land which it may be deemed necessary to resume for making Roads, Canals, Bridges, Towing paths or other works of Public utility or convenience: SO NEVERTHELESS that the lands so to be resumed shall not exceed one-twentieth part of the whole of the land hereby leased and that no such resumption shall be made of any land upon which any building may have been erected or which may be in use as gardens or otherwise for the more convenient occupation of any such building.

20 (3) The lessee shall not alienate or deal with the land hereby leased or any part thereof whether by sale, transfer or sub-lease or in any other manner whatsoever without the consent in writing of the lessor first had and obtained.

30 (4) The lessee shall not subdivide the land hereby leased without the written consent of the lessor first had and obtained and then only in accordance with a plan of subdivision approved by the lessor in writing.

(5) The lessee shall keep open and maintain in good condition all drains, ditches and water-courses upon or intersecting the land hereby leased, to the satisfaction of the lessor.

(6) Fruit trees growing on the land hereby leased shall not be cut down without the consent in writing of the lessor.

40 (7) The lessee shall bear, pay and discharge all existing and future rates, taxes, assessments, duties, impositions and outgoings whatsoever imposed or charged upon the land hereby leased or upon the owner or occupier in respect thereof, landlord's property tax only excepted.

(8) The whole of any portion of the land hereby leased used for the grazing of stock shall be enclosed with good and substantial fencing so that all stock kept upon the land shall at all times be adequately fenced in to the

EXHIBITS

P4  
Memorandum  
of Lease  
8th March  
1971  
(continued)

.satisfaction of the lessor.

(9) The lessee shall not remove or dispose of by sale or otherwise any forest produce growing upon the land hereby leased without the written consent of the lessor first had and obtained and subject to such conditions as to the payment of royalty or otherwise as the lessor may direct.

(10) The lessee shall plant with crops in a good and husbandlike manner within the first five years of the lease at least one-fifth of the land suitable for cultivation; at least two-fifths of the said area within the first ten years of the lease; at least three-fourths of the said area within the first twenty years of the lease; and at least three-fourths of the land suitable for cultivation shall be kept planted as aforesaid for the remainder of the term of the lease. 10

(11) The lessee shall manure the portions of the land planted as aforesaid and shall keep the whole in good condition and shall not allow any part to become impoverished and shall use such artificial or other manure as may be required by the lessor or an officer authorised by the lessor in that behalf in writing. 20

(12) The lessee shall apply such measures to check soil erosion as may be required by the lessor in writing and shall maintain such measures to the satisfaction of the lessor or of an officer appointed by the lessor in writing. 30

(13) The lessee shall not fell trees or clear or burn off bush or cultivate any land within a distance of twenty-four feet from the bank of a river or stream.

(14) The lessee shall not cultivate any crops within thirty-three feet of the centre of any public road or on a slope exceeding thirty-five degrees from the horizontal. 40

(15) The lessee shall not clear, burn-off or cultivate or permit excessive grazing of the top twenty-five per centum of the hills (as measured vertically) which have a slope exceeding twenty-five degrees from the horizontal.

(16) Only such buildings shall be erected

on the land hereby leased as are necessary  
for -

EXHIBITS

P4

Memorandum  
of Lease

8th March  
1971

(continued)

- 10
- (a) a dwelling or dwellings for the lessee;
  - (b) dwellings for persons bona fide employed on the land, such as farm and plantation labourers and supervisors;
  - (c) accommodation for implements, vehicles, horses and other stock used in connexion with the farm or plantation or any building directly connected with the work of a farm or plantation.

(17) The lessee shall not at any time graze or keep more than two(2) head of cattle or horses on the land hereby leased.

20

(18) The lessee shall within a period of twelve (12) months from the date of commencement of this lease plant a minimum of two trees per acre on the hilly area within the land herein leased and such trees shall during the continuance of the term of this lease be maintained and tended to the satisfaction of the lessor.

30

(19) Subject to the provisions of the Native Land Leases and Licences Regulations, any building erected by the lessee on the land hereby leased shall be removable by the lessee within three months after the expiration of the lease provided that -

- 40
- (i) before the removal of any building the lessee shall have paid all rent owing by him and shall have performed or satisfied all his other obligations to the lessor in respect of the land hereby leased;
  - (ii) in the removal of any building the lessee shall not do any avoidable damage to any other buildings or other part of the land hereby leased;
  - (iii) immediately after the removal of any building the lessee shall make good all damage occasioned to any other building or other part of the land hereby leased;
  - (iv) the lessee shall not remove any building

EXHIBITS

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Memorandum  
of Lease  
8th March  
1971  
(continued)

without giving one month's previous notice in writing to the lessor of his intention to remove it;

(v) at any time before the expiration of the notice of removal, the lessor, by notice in writing given by him to the lessee, may elect to purchase any building comprised in the notice of removal, and any building thus elected to be purchased shall be left by the lessee and shall become the property of the lessor who shall pay to the lessee the fair value thereof to an incoming lessee of the land; and any difference as to the value shall be settled by arbitration in the manner provided for by the said Regulations; 10

(vi) if the lessee applies for a renewal of this lease the provisions of this condition shall be deemed to cease to apply as from the date of the application of the lessee for a renewal of the lease, and thereafter the whole matter shall be dealt with under the provisions of the said Native Land (Leases and Licences) Regulations. 20

(20) In the event of any breach by the lessee of any covenant or condition in this lease the lessor may enter upon and take possession of the land hereby leased or may at the discretion of the Board impose a penal rent in respect of such breach. 30

---

TO ALL, TO WHOM THESE PRESENTS SHALL COME WE,  
SHIU PRASAD (son of Suchit Bhagat) BAIJNATH  
(son of Hardeo) and CHANDRIKA PRASAD (son of  
Halka) all of Tabia, Labasa in the Province of  
Macuata in the Colony of Fiji, Cultivators  
SEND GREETING

WHEREAS by a duly convened general of the members of the TABIA SANATAN DHARAM SCHOOL of Tabia aforesaid held at the said School Building on the 22nd day of February, 1970 we the said SHIU PRASAD, BAIJNATH and CHANDRIKA PRASAD were appointed Trustees of the said School. 40

AND WHEREAS the rules of the said School provided that all property of the said School subject to liabilities thereof shall be vested in the

Trustees UPON TRUST for the members for the time being NOW THESE PRESENTS WITNESS

EXHIBITS

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Memorandum  
of Lease

8th March  
1971

(continued)

- 10
1. That we the said SHIU PRASAD, BAIJNATH and CHANDRIKA PRASAD hereby declare that we stand seised and possessed of all the real and personal property of the said TABIA SANATAN DHARAM SCHOOL IN TRUST for the said Tabia Sanatan Dharam School and subject to the resolution of the members of the said School at any general or special meeting duly convened under the rules of the said School.
  
  - 20
  2. That the said rules of the said TABIA SANATAN DHARAM SHOOOL we the said SHIU PRASAD, BAIJNATH and CHANDRIKA PRASAD will continue in the capacity of trustees of the said Tabia Sanatan Dharam School will during the respective lives or alternatively until we respectively resign or are respectively removed from the trusteeship by a resolution passed at a duly convened general or special general meeting of members.
  
  - 30
  3. If from any cause whatever either of us the said SHIU PRASAD, BAIJNATH, CHANDRIKA PRASAD shall cease to be a trustee of the said Tabia Sanatan Dharam School all the property of the said Tabia Sanatan Dharam School both real and personal shall vest in the surviving or continuing trustees until another trustee shall be duly appointed by the members of the said Tabia Sanatan Dharam School.
  
  - 40
  4. We the said SHIU PRASAD, BAIJNATH and CHANDRIKA PRASAD will execute or sign all such instructions and documents and will do all such acts matters and things in relation to the premises as may from time to time be necessary to comply with any resolution of the said Tabia Sanatan Dharam School passed at any duly convened meeting or general or special general meeting of the members of the said School.

IN WITNESS WHEREOF we have hereunto set out hand and seal the twenty-third day of November, One thousand nine hundred and seventy.



EXHIBITS

P4  
Memorandum  
of Lease  
8th March  
1971  
(continued)

SIGNED SEALED AND DELIVERED )  
by the said SHIU PRASAD )  
after foregoing had been )  
first read over and expl- )  
ained to him by me in the )  
Hindustani language and he ) Sgd. Shiu Prasad  
appeared fully to under- )  
stand the meaning and )  
effect thereof in my )  
presence. )

10

Sgd.

District Officer Macuata/Bua

SIGNED SEALED AND DELIVERED )  
by the said BAIJNATH after )  
foregoing had been first )  
read over and explained to )  
him by me in the Hindustani )  
language and he appeared ) Sgd. Baijnath  
fully to understand the )  
meaning and effect thereof )  
in my presence. )

20

Sgd.

District Officer Macuata/Bua

SIGNED SEALED AND DELIVERED )  
by the said CHANDRIKA PRASAD ) Sgd. Chandrika Prasad  
in the presence of :

Sgd.

District Officer Macuata/Bua

(21) All the statutory conditions and  
covenants set out in Section 9(1) of the  
Agricultural Landlord and Tenant Ordinance  
are implied and form part of this instrument  
of tenancy.

30

(22) "This contract is subject to the  
provisions of the Agricultural Landlord and  
Tenant Ordinance, and may only be determined,  
whether during its currency or at the end of  
its term, in accordance with such provisions.  
All disputes and differences whatsoever arising  
out of this contract, for the decision of which  
that Ordinance makes provision, shall be  
decided in accordance with such provisions."

40

EXHIBITS

P4  
Memorandum  
of Lease  
8th March 1971  
(continued)

10 The lessee hereby covenants that he will  
fulful and be bound by all the terms and  
conditions set out herein and in the Native  
Land (Leases and Licences) Regulations, in so  
far as the same are applicable to this lease  
and the lessee hereby accepts this lease of  
the above mentioned lands to be held by the  
lessee as tenant subject to the conditions,  
restrictions and covenants herein expressed  
or implied.

In witness whereof the Seal of the Board  
is hereunto affixed this Eighth day of March  
1971

The Common Seal of the Native  
Land Trust Board was hereunto  
affixed in pursuance of a  
resolution of the Board by  
and in the presence of

Member of the Board

20 Secretary

The Signature by Mark of  
SHIU PRASAD

Sgd. SHIU PRASAD

Sgd. BAIJ NATH

was made in my presence and  
I verily believe that such  
signature is of the proper  
handwriting ~~left thumb print~~  
of the person described in  
the above lease as

Sgd. CHANDRIKA PRASAD

Sgd.

30 the lessee and I certify that  
I read over and explained the  
contents hereof to the lessee  
in the Hindustani language  
and he appeared fully to  
understand the meaning and  
effect thereof.

In The Supreme Court of Fiji  
\_\_\_\_\_ Case No. \_\_\_\_\_  
\_\_\_\_\_ V. \_\_\_\_\_

NATIVE LEASE NO. 13810  
REGISTERED -8 MAR 1971  
at 2.30 p.m.

EXHIBIT "P4"

Sgd.

40 Date 26/3/76

Registrar of Titles

Stamp

Registrar of Titles

EXHIBITS

P5

SUGAR CANE CONTRACT  
21st April 1970EXHIBITS

P5

Sugar Cane  
Contract21st April  
1970SUGAR-CANE CONTRACT

10 Contract between South Pacific Sugar Mills Limited (the Millers) and CHANDRIKA PRASAD f/n Gudu Lal (the Grower) Whereby the Grower will cultivate, sell and deliver cane on and from the farm described in Schedule 1; and the Millers will purchase and accept delivery of cane, and manufacture and sell sugar, molasses and other profitable by products on the terms and conditions set out hereunder.

## Clause 1 - Definitions

1. 'Approved national harvest quotas of sugar and of cane' and 'approved farm harvest quotas' mean the quotas referred to in Clause 3 and approved in accordance with the procedure set out in Schedule 2.
- 20 'Authorised Assignment' means an Assignment authorised by Clause 19.
- 'Committee' means the committee of a gang constituted for the sugar season under the provisions of Clause 5 hereof.
- 30 'Independent Chairman', 'Independent Vice-Chairman' and 'Independent Accountant' means the persons appointed as such by His Excellency The Governor under the Sugar Industry Ordinance 1961.
- 'Sugar Board' and 'Sugar Advisory Council' mean the Board and Council established as such under the Sugar Industry Ordinance 1961, as amended by later Ordinances.
- 'Year' means a year from 1st April to 31st March.
- 'Publish' means publish by such methods of publication as are approved by the Independent Chairman.
- 40 'Mill' means the LABASA mill.

## Clause 2 - Length of Contract

2. (a) This contract shall commence on the date of acceptance by the grower and the millers, and shall continue until the 31st March, 1980, or until such earlier

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Sugar Cane  
Contract  
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1970  
(continued)

termination as provided in this contract.

- (b) If the grower ceases to occupy the farm for any reason whatsoever, otherwise than by authorised assignment, the contract shall terminate on the succeeding 31st March.
- (c) If the growers or the millers commit a breach of the contract and fail to remedy such breach within thirty days after notice in writing, the party serving such notice may seek permission from the Independent Chairman to terminate the contract. Before granting permission, the Independent Chairman shall give the party alleged to be in default an opportunity of being heard on the matter. If such permission is granted, and notice thereof given to the party in default, the contract shall terminate on the succeeding 31st March or such other day as the Independent Chairman shall direct. 10 20
- (d) Should it at any time become unlawful to cultivate cane on the farm, the contract shall terminate on the succeeding 31st March.
- (e) Should the miller decide to discontinue crushing at the mill, or the grower decide to discontinue growing cane on the farm, the party concerned may terminate the contract by giving at least two years' notice of termination to the other to expire on 31st March two years later. 30
- (f) If this contract is not terminated earlier but continues until 31st March, 1980, then the Millers and the Grower agree that they will enter into a further contract relating to the same subject-matter, the terms of such further contract to be settled in accordance with the provisions of the Sugar Industry Ordinance or any amendment thereof, but, meanwhile pending such settlement, the Millers and the Grower agree to continue on the terms of this agreement from 31st March, 1980, until such further contract is agreed. 40

Clause 3 - Approved Farm Harvest Quotas

3. (a) The national basic allotment of cane for 50

Fiji is 2,516,000 tons calculated on 340,000 tons of sugar multiplied by 7.4. The proportion of the national basic allotment of cane belonging to the farm is 53 tons. This tonnage is the farm basic allotment.

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Sugar Cane  
Contract

21st April  
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(continued)

- 10 (b) The amount of cane to be bought in each year by the Millers from the farm shall be known as the approved Farm Harvest Quota. It shall be calculated as provided in Schedule 2.
- 20 (c) If, during the period of this contract, the Sugar Board is satisfied that the total supply of cane to the mill is likely for a time to fall short of the total of the approved farm harvest quotas for the mill, the Sugar Board may authorise the Millers, either to increase all or some farm basic allotments, or to issue contracts to additional growers for farms with such basic allotments of cane as are approved by the Independent Chairman, or to purchase or use additional cane. The duty of the Sugar Board shall be to ensure, so far as is possible, fair treatment between various growers.

Clause 4 - Farming

The grower shall :

- 30 (a) Plant and cultivate on the farm an amount of cane reasonably sufficient in normal seasons to meet the approved farm harvest quota. He may, subject to the rules of good husbandry, plant and cultivate a larger amount of cane without the millers being obliged to purchase the excess above the approved farm harvest quota.
- 40 (b) Be at liberty to plant varieties of cane approved each year by the Millers, or, on appeal, by the Independent Chairman, as suitable for the farm; provided that he shall have a choice of one out of at least two varieties as suitable.
- (c) Co-operate with the millers in finding, removing and destroying diseased cane ('roguing').
- (d) Grant full liberty to the millers and neighbouring growers, with or without

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Sugar Cane  
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21st April  
1970  
(continued)

vehicles, livestock and equipment, to enter upon the farm and to pass and repass thereover as may be necessary for the purpose of this contract or to enable cane grown by neighbouring growers to be delivered with expedition and safety. In exercising the rights granted, the route taken across the farm shall be selected to reduce to a minimum inconvenience to the grower. 10

Clause 5 - Harvesting Gangs

- (a) The growers shall work together in harvesting gangs in a manner accustomed heretofore. The gangs constituted for the 1969 season shall be the gangs for 1970 and later seasons unless altered in accordance with the provisions hereof.
- (b) Each harvesting gang shall, at the beginning of each year, elect a committee to represent the gang for the ensuing year until the election for the following year. The committee shall, amongst other things :- 20
- (i) appoint a sirdar to manage and control the operations of the gang;
  - (ii) open a bank account for the conduct of the gangs' financial transactions;
  - (iii) arrange, with the millers, a programme of harvesting for the ensuing season; 30
  - (iv) do its best to keep to the harvesting programme, and to see that the members of the gang keep to it.
- (c) Some of the members of a harvesting gang shall be permitted to 'split off' and form a new gang, or to join another gang, or one gang may amalgamate with another, provided always that the new gang and the old gang, will, after the change, be efficient and workable units in accordance with the principles which were unanimously approved by the Sugar Advisory Council on 13th June, 1967, or any modification thereof that may be hereafter made. 40
- (d) If any grower is not a member of a gang, he may be required by the millers to join

a gang, provided that it is reasonable and the committee of that gang consent. If he reasonably refuses, he shall be entitled to all the rights and be liable to all the duties of a committee and of a sirdar in respect of the harvesting of his own cane.

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(continued)

- 10 (e) In the event of any dispute as to 'splitting', joining or amalgamation, the matter shall be referred to the Independent Chairman, whose decision shall be final.

Clause 6 - Harvesting

6. The grower shall :

- (a) Harvest the cane in a proper and workmanlike manner in accordance with the rules of good husbandry and ensure that the cane is cut level with the ground.
- 20 (b) Harvest his cane in strict accordance with the harvesting programme and shall not do anything to disrupt that programme.

Clause 7 - Burnt Cane

- 30 (a) The grower shall not burn cane without permission. Such permission shall be given whenever the Sector Officer, after consultation with the sirdar, thinks proper. It shall not be unreasonably withheld. All cane burnt with such permission (within the times of the harvesting programme) and offered for delivery within seven days of burning shall be accepted by the millers but at reduced prices. For cane delivered within two days of burning with permission, the reduction shall be 5% of the first payment for cane. For cane delivered after two days and within seven days of burning the deduction shall, in addition to the 5%, be 4% of the first payment for cane in respect of each twenty-four hours after the first two days. Each reduction shall be calculated to the nearest cent and at an amount per ton of cane burnt.
- 40 (b) If cane is burnt without such permission, but it has, in the opinion of the Gang Committee, been done by accident, or by sparks or fire from other land, or by the

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21st April  
1970

(continued)

neglect or wilful misconduct of a third person (and the grower has in no way caused or contributed thereto by his own connivance, act or default, or neglect of proper precautions), then the millers and the Gang Committee shall do their best to harvest the cane as soon as practicable; and the millers shall advance the harvesting expenses. Payment shall be made for the cane at the reduced prices set out in the foregoing paragraph (a). 10

- (c) If the Gang Committee is of opinion that cane was burnt by the act or default of the grower himself, or with his connivance, or he has neglected proper precautions to prevent burning, then he shall not be entitled to any help from the gang or the millers in the harvesting of it. The millers shall not be bound to accept it, or to advance him any of the harvesting expenses. If they do accept it, payment for it shall be made at the reduced prices set out in the foregoing paragraph (a) but shall not be made until three months later than such payment would have been made for the cane if delivered unburnt. 20
- (d) The grower shall have a right to appeal to the Independent Chairman from any decision of the Gang Committee under (c) hereof adverse to him. 30
- (e) The deductions made under this clause on account of burnt cane shall be paid either :
- (i) where there is more than one member of his gang, to all members of that gang proportionately to the tonnage of unburnt cane delivered by them and accepted by the miller in the season or, 40
- (ii) where there is no other member of his gang or where all his cane and all the cane of all other members of his gang has been burnt in that season, to all growers based on the mill proportionately to the tonnage of unburnt cane delivered by them and accepted by the miller in the season. 50



The amount shall be paid to the grower at the time of paying the second instalment of the price or so soon thereafter as is practicable.

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Clause 8 - Delivery (Tramlines)

(continued)

10

(a) The growers shall deliver the full trucks to the nearest convenient delivery point on the tramlines. The millers shall provide adequate sidings for the reception of full trucks and the storage of empty trucks.

20

(b) The millers shall, at a reasonable time beforehand, inform each gang sirdar of the time when the full trucks are expected to be picked up by the locomotive.

(c) The grower shall ensure that the cane is tightly bound down with the wire rope attached to the cane truck; and that one copy of the delivery slip, showing the number of the cane truck, the grower's contract number, the date of delivery, and the actual pick-up time, is handed to the driver of the locomotive. The millers shall provide suitable delivery slips to be used by the grower in such a form as permits the grower to retain a copy thereof for his own use.

30

(d) The grower shall remove from the cane, before delivery, green tops, trash, side shoots, suckers, roots, rotten cane, dead cane, weeds, dirt and stones. If cane is delivered with a percentage by weight of such matter in excess of 2% determinable from a reasonable sample, the millers may, as an alternative to refusing acceptance of the cane, return it to the point of delivery for cleaning by the grower and subsequent delivery when clean.

40

(e) If tramline cane is lost after delivery to the millers and before it is weighed, the grower shall be deemed to have delivered a tonnage equivalent to the average tonnage of all trucks delivered by him in the seven days in and about the day of the lost delivery.

(f) If the cane is delayed for an unreasonable

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(continued)

and excessive time after delivery to the millers and before it is weighed, the grower shall be entitled to compensation from the millers for the loss of weight occasioned by the delay, such compensation to be fixed, in case of difference, by the Independent Chairman.

Clause 9 - Delivery (Lorry)

- (a) The millers shall advise the growers, a reasonable time beforehand, of the times when deliveries can be accepted from them. Such times shall be such as to enable the harvesting programme to proceed in an orderly manner. 10
- (b) The growers shall deliver the cane into the cane carrier at the mill in accordance with the millers' directions, and give the lorry ticket showing ownership of the cane to the weighbridge clerk. The clerk shall return a copy to the lorry-driver, giving particulars of the weight. 20
- (c) Clause 8(d) above shall also apply to Delivery (Lorry).

Clause 10 - Transport (Tramline)

10. (a) The millers shall keep in good repair all tramlines, locomotives, and rolling stock; but horselines shall be the responsibility of the grower.
- (b) The millers shall, unless prevented by causes beyond their control, supply a sufficient number of trucks and sufficient portable lines in sufficient time to allow the daily harvest to proceed in accordance with the agreed programme. If the millers fail, through their own fault, to fulfil this obligation, the grower shall be entitled to compensation from the millers for any loss sustained by him on this account, such compensation to be fixed, in case of difference, by the Independent Chairman. 30 40
- (c) The millers shall, so far as practicable, pick up cane lost on the way to the mill from the delivery point and transport it to the mill weighbridge. The tonnage of that cane shall be recorded as suspense cane.

Clause 11 - Weighing

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(continued)

- 10 (a) The millers shall weigh cane at the mill weighbridge. The grower shall be entitled to appoint a representative (check-weigher) to observe and check the weight of cane. All trucks and lorries shall be weighed in such a way that the weighbridge will give correct weight. The millers shall regularly during the crushing season check the accuracy of the weighbridge and during such inspection the check-weigher may be present.
- 20 (b) When tramline cane is weighed, the millers shall record the truck number, the grower's contract number, and the pick-up time in accordance with the delivery slip, the weight of the cane and the date and time of weighing. A copy of the record so taken shall be sent to the sirdar (on behalf of the grower) within seven days from the date of the weighing.
- (c) Any tonnage of unclaimed cane shall be recorded as suspense cane.
- (d) The miller may, at any time prior to crushing, reject cane found by sampling to have a juice purity below 70.

Clause 12 - Crushing

- 30 (a) The miller shall crush all cane accepted for delivery, manufacture sugar to the maximum extent practicable and economic, use their best endeavours to sell all sugar at the best available price and provide adequate storage capacity.
- 40 (b) The millers shall publish each year, a reasonable time beforehand, the date for commencement of crushing at the mill, such date to be approved by the Sugar Board.
- (c) The millers may terminate the crushing season at such time as may be approved by the Sugar Board and shall give a preliminary warning as long beforehand as possible, and publish an intermediate warning at least fourteen days before the

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expected date, to be followed by a  
final warning of the actual date.

Clause 13 - Advances by Millers

The millers shall advance to the grower,  
without charging interest thereon, the costs  
incurred by him, as follows :-

- (a) The cost of seed cane required by the grower for planting.
- (b) The cost of fertiliser purchased by the grower from the millers for use on the grower's farm during a period of twelve months from the date of purchase. 10
- (c) The cost of harvesting the grower's cane, where that is done by the gang of which he is a member, in which case the moneys so advanced shall be paid to the Committee on behalf of the grower.
- (d) The cost of transporting the harvested cane from the field to the delivery point. 20

Such advances shall be a first charge on any payments to be made by the millers to the grower.

Clause 14 - Definitions Relating to the Price of Cane

- (1) 'Proceeds of sale' means the certified proceeds actually received by the millers -
  - (i) for sugar, molasses, and other by-products sold overseas, deducting certified expenses for marketing, stevedoring, and delivery to ship (other than at the usual place in the usual way), freight and insurance on ship, expenses on route or at destination, and allowances to buyers; 30
  - (ii) for sugar, molasses and other by-products sold in Fiji and neighbouring islands, deducting certified delivery expenses.
- (2) In case of sugar, molasses, or other by-products which were sold unreasonably at too low a figure, or which were not sold by the millers but used by them or their associated companies, the certified value thereof shall be added to and included in the 'proceeds of sale'. 40
- (3) In ascertaining the 'proceeds of sale', there shall be deducted; (i) the certified costs of the Sugar Board, the Sugar Advisory

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(continued)

10 Council, the Independent Chairman, the  
Independent Vice-Chairman, and the  
Independent Accountant; (ii) any existing  
or future sugar export tax, stabilization  
fund levy, port and customs services tax,  
and any other future charge imposed by  
Government or a Public Authority in Fiji  
on sugar, molasses, or by-products, when  
the ultimate charge falls on and is borne  
by millers or growers; (iii) any unusual  
charge or expense certified to be a proper  
deduction.

20 (4) In these definitions 'certified' means  
certified jointly by the Independent Chairman  
and Independent Accountant to be proper;  
but, prior to the issue of such certificate,  
the accountants of the millers and of the  
growers (one for the millers and one for  
the growers) shall be entitled in confidence  
to examine the books and accounts and to  
make such representations as they think fit  
to the Independent Chairman and Independent  
Accountant in respect thereof, and it is  
only after taking those representations  
into account, that the Independent Chairman  
and Independent Accountant shall issue  
their certificate.

Clause 15 - Price of Cane and Payment

30 The price per ton of cane shall be 65% of  
the proceeds of sale divided by the number  
of tons of cane delivered, accepted and  
weighed by the millers during the season  
to which the proceeds of sale relate.

Clause 16 - Guaranteed Minimum

The Millers guarantee that the price will  
never be less than the figure of \$7.75 a  
ton, and they will pay this guaranteed  
minimum by two instalments.

40 First, \$5.75 a ton of cane within five weeks  
after delivery.

Second, \$2.00 a ton of cane within six weeks  
after the end of crushing at the mill.

If the growers' share of the proceeds of  
sale is not sufficient to enable the millers  
to pay this guaranteed minimum, then the  
over-payment shall be made good for that  
season by recourse to the Sugar Cane Price

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Support Fund. But the over-payment shall be carried forward to subsequent seasons and deducted out of subsequent amounts due under the contract, provided however that any deductions shall not reduce the price below the minimum of \$7.75 for any season.

Clause 17 - Payments when Price Exceeds the  
Guaranteed Minimum

When the price exceeds the guaranteed minimum of \$7.75, the millers shall, subject to the provisions of Clause 16 hereof, make a third payment, being the balance of the actual price by 30th June insofar as the proceeds of sale have been received and certified by that date. The final payment shall be paid immediately after all proceeds of sale have been certified, provided that if there should be an amount outstanding and not settled on 1st October the millers shall estimate the likely proceeds and complete the accounting for proceeds of sale and the price of cane on the basis of the estimate. The matter shall be adjusted and certified in the proceeds of sale for the year in which the claim is finally settled. 10 20

Clause 18 - Adjustments

(1) The millers shall be entitled to deduct from any payment :-

- (a) all deductions for burnt cane; 30
- (b) the amount of any advances under Clause 13 hereof;
- (c) any other debts due and payable by the grower to the miller.

(2) The total of all tonnages recorded as suspense cane shall be reduced by the tonnage credited to individual growers for lost truck-loads under Clause 8(e), and the balance of the suspense account remaining unclaimed 21 days from the finish of crushing at the mill shall be paid for by the millers who shall distribute the price of that cane at the time of the second, third or final payments among the growers who have delivered cane in proportion to the tonnage delivered by them. 40

Clause 19 - Assignments

EXHIBITS

P5  
Sugar Cane  
Contract  
21st April  
1970

(continued)

- (1) The grower shall on a transfer by him of the right to occupy the farm assign to the transferee his whole interest in this contract. The millers shall not be bound by any such assignment unless :-
- 10 (a) the assignment of the whole of the benefits and obligations of this contract is made to one non-corporate person, and
- (b) the assignment is in writing containing a clear statement of the full consideration in money or money's worth given and is produced to the millers prior to completion for noting and the assignment and consideration is endorsed on this contract by the millers, and
- 20 (c) the assignee undertakes in the assignment in writing himself to occupy the whole farm and cultivate cane thereon and endorses this contract to this effect, and
- (d) the assignee does not hold a contract with the millers in respect of any other land for the sale of cane.
- 30 (2) If the grower should fail to notify the millers of such an assignment or should the millers at any later time become aware that the consideration was understated or should the assignee cease to occupy and cultivate cane on the farm or should it be found that the assignee does hold a contract with the millers for the sale of cane on other land the millers shall immediately cancel this contract unless at the request of the grower or his assignee the Independent Chairman decides otherwise.
- 40 (3) Nothing in sub-clause (1) is to prevent an assignment of a contract to the holder of another contract whereby the holder will hold two or more contracts in respect of farms totalling not more than 15 acres.
- (4) The grower shall not be entitled to assign this contract or any part of it except by the method and on the terms set out in sub-clause (1) above.
- (5) In the event of the death of the grower during

EXHIBITS

P5  
Sugar Cane  
Contract  
21st April  
1970  
(continued)

during the term of this contract and if under his will or by operation of law more than one person becomes entitled to occupy and cultivate the farm the millers shall, in the event that they are unable within three months of the death of the grower to reach a satisfactory agreement with interested parties that one person only shall be recognised as the grower for the purposes of this contract, refer the matter for decision by the Independent Chairman, and such decision shall be binding on the legal personal representatives of the grower and the millers. 10

(6) Should the millers at any time sell the mill, they shall assign this contract and the whole of its rights and obligations hereunder to the purchaser of the mill and the millers will obtain from the purchaser a written undertaking by the purchaser to continue to accept and pay for the grower's cane under and subject to the terms and conditions of this contract. The millers shall give notice publicly to the growers of such undertaking. The millers shall not be entitled to assign this contract or any part of it except by the method and on the terms set out in this sub-clause. 20

Clause 20 - Variation of Contract 30

Should the representatives of the millers or the representatives of the growers on the Sugar Advisory Council give notice to the Independent Chairman either that there has been since the 27th January, 1970, a material change or changes in the relevant circumstances of sufficient importance to justify a variation or variations of the contract, or that it is desired that a length of tramline should be closed, action shall be taken and rights and obligations shall accrue as defined in Section 24 of the Sugar Industry Ordinance 1961 as amended by later Ordinances. 40

Clause 21 - Force Majeure

Neither party shall be responsible to the other for any failure to fulfil any term of this contract, if fulfilment has been hindered or prevented, whether directly or indirectly by fire, flood, earthquake, tempest, explosion, war, civil commotion, 50



riots, arson, sabotage, shortage of labour, strikes, lockouts, or other industrial disputes, failure or shortage of supplies, fuel, power or shipping or other circumstances, always providing the circumstances in the above list were not within the reasonable control of the party in default under the contract.

EXHIBITS

P5  
Sugar Cane  
Contract  
21st April  
1970

(continued)

SCHEDULE 1

10 Description of Farm as Required in  
Recital

Growers number in Miller's Register	Title	Number or Date of Title	Description of land	Area
4020	Native Lease	N.L.T.B. 4/9/1135	Delai vui- loqi E & P 1/7/95 (Area 11ac 3 rood)	6.0

20

SCHEDULE 2

1. Subject to any amendment under paragraph 3 the approved National Harvest Quota for the year 1970 shall be 2,875,000 tons of cane and the approved Farm Harvest Quota for 1970 shall be 61 tons of cane.
2. For the second and each subsequent year, the millers shall on or before 1st April of the previous year declare publicly the approved national harvest quotas of sugar and of cane for the year and the national and mill percentages of the basic allotments. These quotas and percentages shall have been previously submitted by the millers for approval to the Sugar Board. They shall be estimated after considering the total amounts of sugar likely to be exported and sold locally without resort to unreasonably low prices. Due regard shall be paid in estimating to the provision and maintenance of adequate but not excessive stocks of sugar, to standover cane, to mill capacity and to the anticipated average yield of sugar from cane. The millers shall apply the percentage approved for the mill to the farm basic allotment and the resulting figures shall be the approved farm harvest quota.

30

40

EXHIBITS

P5  
Sugar Cane  
Contract  
21st April  
1970  
(continued)

3. The approved harvest quota may only be altered by the following procedure and then only if notice is publicly given before 15th May in the year of harvest. If there has been, in the opinion of the millers' or growers' representatives on the Sugar Advisory Council, a material change in the relevant circumstances taken into account when fixing the current approved national harvest quota for sugar or cane, either may give notice to the Sugar Board proposing amendment upwards or downwards of the current quota. No amendment downwards shall be made unless the Sugar Board is satisfied that purchase of all approved farm harvest quotas would result in an unwise holding of sugar stocks or an unwise reduction in national harvest quota for the next year. No amendment upwards shall be made unless the Sugar Board is satisfied that the consequent increase in sugar produced would be reasonable in the light of the market situation. If any amendment is approved, the millers shall alter the approved farm-harvest quota to accord as exactly as is practicable with such amendment. 10
4. The grower shall be entitled on application to his Sector Officer to obtain a written statement of his approved farm-harvest quota whether original or altered. 20
5. If the grower shall have failed substantially over a three-year period to offer for delivery to the millers the approved farm harvest quota, the millers may on or after 1st April, 1973, or on any subsequent 1st April, compute the shortfall between the average of the approved farm harvest quotas for the preceding three years and the average of the tonnage of cane purchased from the grower from the farm during such period. The farm basic allotment shall, unless the Independent Chairman for special reasons directs otherwise, be reduced if the shortfall exceeds 20% by the excess of the shortfall over 20%, and, if the shortfall similarly calculated over five years exceeds 50%, the millers may, subject to similar direction, terminate the contract on the succeeding 31st March. Should the grower assign this contract in accordance with Clause 19 to a person approved as a suitable grower by the Independent Chairman the farm basic allotment shall forthwith return to its unreduced amount. 30 40 50

Grower's signature or mark: Sgd. Chandrika Prasad  
Date: 21/4/70  
Witness: Sgd. Illegible  
District Administration  
Labasa.

Sgd. Illegible

Manager South Pacific Sugar  
Mills Limited

Date. 29 Apr. 1970

EXHIBITS

P5

Sugar Cane  
Contract

21st April  
1970

(continued)

EXHIBITS

P6

PROVISIONAL APPROVAL FOR  
LEASE - 16th October 1967

P6

Provisional  
Approval  
for Lease

16th October  
1967

10 N.L.T.B. No. 4/9/1135 Office of the Native Land  
Trust Board  
Suva, 16.10.1967

Sir,

I have the honour to inform you that your application to lease a piece of land known as DELAIVUILOQI situated in the Tikina of Sasa has been provisionally approved by the Native Land Trust Board on the following terms :-

20 Estimated area, subject to survey  $11\frac{3}{4}$  acres  
Period 30 years, from 1/7/1965  
Rent (payable half-yearly) £8.0.0.p.a.p.a.  
2nd class cane land;  
Rental to be paid on account pending survey  
of land: £94.0.0 per annum.  
£ : : deposited vide R.R.  
Estimated survey fee, subject to  
adjustment, £52.0.0.

30 The Lease will be subject to the conditions set out in the Native Land (Leases and Licences) Regulations (Cap.104), a summary of which conditions appears on the back hereof.

2. You are requested to pay the estimated survey fee, together with the rent assessed on the estimated area of the land for the first period of six months from the date of the Board's provisional

EXHIBITS

P6

Provisional  
Approval  
for Lease

16th October  
1967

(continued)

approval of lease, without delay to the District Officer or to the Native Land Trust Board in Suva.

3. You will not receive final notice of approval nor may you occupy the land provisionally approved for lease until the first six months rent and the estimated survey fee have been paid.

4. If you do not pay the rent and the estimated survey fee within six months from the date of this notice, the Board will consider the provisional approval of the lease cancelled without further notice. 10

5. In the event of it being shown by survey that the land provisionally approved for lease forms part of any land the subject of an existing freehold or leasehold title, this notice of approval of lease shall be deemed to be cancelled, without prejudice or loss to the Board. 20

Owned by the Mataqali Nadogo

Class A - Agricultural

- (a) Number of livestock to be limited to 2 head.
- (b) 2 trees to be planted per acre within 12 months of date of approval.
- (c) Lessee to seek advice on Soil Conservation.
- (d) Subject to cancellation of T.A.W. dated 13th July, 55 and payment of all previous rent up to 30/6/65.

Yours faithfully, 30

Sgd. Illegible  
for Secretary

To CHANDRIKA PRASAD F/n Gudulal,  
Tabia, Sasa,  
C/- Asst. Land Agent, LABASA.

SUMMARY OF GENERAL CONDITIONS

EXHIBITS

1. If the period of the lease exceeds 25 years the rent will be subject to reassessment at the end of every period of 25 years to a maximum not exceeding six per cent of the unimproved capital value of the land.

P6  
Provisional  
Approval  
for Lease  
16th October  
1967

10 2. A minimum sum may be required to be expended on permanent improvements within a limited period from the date of commencement of lease.

(continued)

3. The Lessor may resume for public purposes, without compensation, any part not exceeding one-twentieth of the whole of the leased land, provided that the part required is not built upon or under cultivation.

4. The lessee may not transfer sublet mortgage or assign the lease without the written consent of the lessor.

20 5. Any breach of the Distillation Ordinance or of the Liquor Ordinance will render the lease liable to cancellation.

6. Fruit trees on the land may not be cut down without the consent of the lessor.

7. All stock kept on the land must at all times be securely fenced in.

8. All existing and future rates, taxes, assessments and outgoings whatsoever except landlord's property tax are payable by the lessee.

30 9. No forest produce growing on the land may be removed or disposed of without the written consent of the lessor, and subject to payment of royalty as prescribed by the Native Land (Forests) Regulations; and on a grazing block no forest tree may be felled or injured except for clearing the land for the planting of grass or for erecting fences or buildings.

40 10. Any building erected by the lessee shall be the property of, and be removable by, the lessee (subject to certain conditions) before or within reasonable time after the expiry of the lease.

11. On an agricultural block the lessee is required properly to cultivate at least one-fifth of the land suitable for cultivation within the

EXHIBITS

P6  
Provisional  
Approval  
for Lease  
16th October  
1967

first five years; two-fifths within ten years, and three-fourths within twenty years from the date of commencement of the lease; and the areas so planted must be manured and kept in good condition to the satisfaction of the lessor; but no land within 24 feet from the bank of a river or creek or within 33 feet of the centre of a public road may be cultivated.

(continued)

12. On an agricultural or grazing block the lessee may not clear, burn off, cultivate or permit excessive grazing of the top 25 per centum of hills having a slope of more than 25 degrees from the horizontal; and the lessee must apply such other measures as are required by the lessor to prevent erosion of the soil.

10

13. If any portion of an agricultural or grazing block be used for buildings not incident to the purposes of the lease, or, in the case of a grazing block, if the land be used for agricultural purposes in excess of the requirements of stock and persons on the premises, the rent of the land so used may be reassessed accordingly.

20

14. On a grazing block the lessee is required to stock the land at a minimum rate of 1 head of cattle or 5 sheep or goats per 64 acres within the first five years of the lease, and 2 head of cattle or 10 sheep or goats per 64 acres within the first ten years of the lease, and to keep the land so stocked thereafter.

30

15. On a residential block, the lessee :-

- (a) must erect a dwelling house within a specified period.
- (b) may not erect more than one dwelling, which may not cover more than one-third of the total area of the block;
- (c) may not conduct any trade or business on the premises.
- (d) must keep all buildings in good and tenantable repair.

40

16. On a commercial block, the lessee :-

- (a) must erect a building, to be used for commercial purposes, within a specified period;

- (b) must keep all buildings in good and tenantable repair;
- (c) may not cover more than three-quarters of total area with buildings;
- (d) may not carry on in the premises any undesirable or obnoxious trade or business.

EXHIBITS  
P6  
Provisional  
Approval  
for Lease  
16th October  
1967  
(continued)

10 17. In any lease the lessor may limit the maximum number of stock which may be kept or grazed on the land.

18. In the event of a breach or of non-fulfilment of any condition the lessor may re-enter upon the land or may, at the discretion of the Board, impose a penal rent in respect of any such breach.

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P6  
RECEIPT FOR PAYMENT  
OF £282 - 27th February  
1968

---

P6  
Receipt for  
payment of  
£282  
27th February  
1968

20 NATIVE LAND TRUST BOARD No. 37520  
Station Labasa  
Tikina  
Name of Property DELAIVUILOQI  
Amount £282. -s. -d

Date 27/2/68

RECEIVED from Chandrika Prasad the sum of Two hundred and eighty two pounds - shillings - pence being on account of rent on the above named lease.

30 Commission 29/-  
4/9/1135

Sgd. Illegible

For and on behalf of  
THE NATIVE LAND TRUST BOARD

EXHIBITS

P6  
Receipt for  
payment of  
£52  
  
1st November  
1968

P6

RECEIPT FOR PAYMENT  
OF £52 - 1st November  
1968

\_\_\_\_\_  
NATIVE LAND TRUST BOARD No.5851  
SURVEY RECEIPT

Date 1.11.68

RECEIVED the sum of Fifty two pounds -  
shillings - pence £52. -s. -d. on account  
of Survey Fee Deposit in respect of: 10

LESSEE Chandrika Prasad s/o Gudu Lal  
LAND Delaivuiloqi  
TIKINA Sasa File No. 4/9/1135

Sgd. Illegible  
for and on behalf of Native  
Land Trust Board

\_\_\_\_\_  
P6

P6  
Permit to  
occupy  
(Undated)

PERMIT TO OCCUPY (Undated)

N.L.T.B. No. 4/9/1135  
PERMIT TO OCCUPY NATIVE LANDS APPLIED FOR  
AS A NATIVE LEASE 20

\_\_\_\_\_  
CHANDRIKA PRASAD Father's name Gudulal  
having paid an estimated survey fee of £52.0.0  
and estimated rent to 19 ,  
is accepted as lessee of and is authorised by  
the Native Land Trust Board to enter into  
occupation of the undermentioned land.

Name of land DELAIVUILOQI  
Tikina Sasa  
Estimated area (subject to survey) 11 $\frac{3}{4}$  acres  
0 rood 0 perches 30  
Rental (payable half-yearly) £8.0.0 p.a.p.a.  
2nd class cane land  
Rental to be paid on account pending survey  
of land: £..... per annum

Such authority to occupy is subject to the  
payment of rent in accordance with the terms of  
the notice of provisional approval and to the



conditions set out in the Native Land (Leases and Licences) Regulations Cap.104 a summary of which conditions appears on the back hereof.

EXHIBITS  
P6  
Permit to occupy  
(undated)  
(continued)

This permit is non-transferable.

.....  
District Officer  
for the Native Land Trust  
Board

SUMMARY OF GENERAL CONDITIONS

- 10 1. If the period of the lease exceeds 25 years the rent will be subject to reassessment at the end of every period of 25 years to a maximum not exceeding six per cent of the unimproved capital value of the land.
- 2. A minimum sum may be required to be expended on permanent improvements within a limited period from the date of commencement of lease.
- 20 3. The lessor may resume for public purposes, without compensation, any part not exceeding one-twentieth of the whole of the leased land, provided that the part required is not built upon or under cultivation.
- 4. The lessee may not transfer sublet mortgage or assign the lease without the written consent of the lessor.
- 5. Any breach of the Distillation Ordinance or of the Liquor Ordinance will render the lease liable to cancellation.
- 30 6. Fruit trees on the land may not be cut down without the consent of the lessor.
- 7. All stock kept on the land must at all times be securely fenced in.
- 8. All existing and future rates, taxes, assessments and outgoings whatsoever except landlord's property tax are payable by the lessee.
- 40 9. No forest produce growing on the land may be removed or disposed of without the written consent of the lessor, and subject to payment of royalty as prescribed by the Native Land (Forests) Regulations; and on a grazing block

EXHIBITS

P6  
Permit to  
occupy  
(Undated)  
(continued)

no forest tree may be felled or injured except for clearing the land for the planting of grass or for erecting fences or buildings.

10. Any building erected by the lessee shall be the property of, and be removable by, the lessee (subject to certain conditions) before or within reasonable time after the expiry of the lease.

11. On an agricultural block the lessee is required properly to cultivate at least one-fifth of the land suitable for cultivation within the first five years; two-fifths within ten years, and three-fourths within twenty years from the date of commencement of the lease; and the areas so planted must be manured and kept in good condition to the satisfaction of the lessor; but no land within 24 feet from the bank of a river or creek or within 33 feet of the centre of a public road may be cultivated.

10

20

12. On an agricultural or grazing block, the lessee may not clear, burn off, cultivate or permit excessive grazing of the top 25 per centum of hills having a slope of more than 25 degrees from the horizontal; and the lessee must apply such other measures as are required by the lessor to prevent erosion of the soil.

13. If any portion of an agricultural or grazing block be used for buildings not incident to the purposes of the lease, or, in the case of a grazing block, if the land be used for agricultural purposes in excess of the requirements of stock and persons on the premises, the rent of the land so used may be reassessed accordingly.

30

14. On a grazing block the lessee is required to stock the land at a minimum rate of 1 head of cattle or 5 sheep or goats per 64 acres within the first five years of the lease, and 2 head of cattle or 10 sheep or goats per 64 acres within the first ten years of the lease, and to keep the land so stocked thereafter.

40

15. On a residential block, the lessee :-

- (a) must erect a dwelling house within a specified period;

- (b) may not erect more than one dwelling, which may not cover more than one-third of the total area of the block;
- (c) may not conduct any trade or business on the premises;
- (d) must keep all buildings in good and tenantable repair.

EXHIBITS  
P6  
Permit to occupy  
(Undated)  
(continued)

16. On a commercial block the lessee :-

10

- (a) must erect a building, to be used for commercial purposes, within a specified period;
- (b) must keep all buildings in good and tenantable repair;
- (c) may not cover more than three-quarters of the total area with buildings;
- (d) may not carry on in the premises any undesirable or obnoxious trade or business.

20

17. In any lease the lessor may limit the maximum number of stock which may be kept or grazed on the land.

18. In the event of a breach or of non-fulfilment of any condition, the lessor may re-enter upon the land or may, at the discretion of the Board, impose a penal rent in respect of any such breach.

EXHIBITS

P7

LETTER, RAMRAKHAS TO NATIVE  
LAND TRUST BOARD - 19th March  
1971

P7  
Letter,  
Ramrakhas to  
Native Land  
Trust Board

30

19th March, 1971

19th March  
1971

The Manager,  
The Native Land Trust Board,  
SUVA

Dear Sir,

re: 4/9/1135

40

We act for Chandrika Prasad f/n Guddu Lal who holds an approval notice in respect of the above land. Our client has pledged this land by way of equitable mortgage to the moneylender Guljara Singh and we understand that the documents are invalid by reason of the fact that Guljara Singh did not pay his moneylenders' license at the material time.

We understand that Messrs. Gibson & Co. have written to you in the matter, and that, action has been frozen on this file pending litigation.

EXHIBITS

P7  
Letter,  
Ramrakhas to  
Native Land  
Trust Board  
19th March  
1971  
(continued)

We shall be obliged if you would kindly confirm this as we intend to issue a writ very shortly.

Yours faithfully,  
RAMRAKHAS

Per:

P8  
Letter,  
Native Land  
Trust Board  
to Ramrakhas  
19th March  
1971

EXHIBITS

P8

LETTER, NATIVE LAND TRUST  
BOARD TO RAMRAKHAS  
19th March 1971

10

NATIVE LAND TRUST BOARD  
SUVA, FIJI

19th March, 1971

In reply please  
quote: 4/9/1135

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

20

Gentlemen,

I am directed to acknowledge your letter dated the 19th March, 1971 with regards to your client Chandrika Prasad f/n Guddu Lal and have to inform you that the mortgagee had already exercised his power of sale and we have already approved the transfer.

The lease documents have already been drawn and registered in the name of the transferee.

30

Yours faithfully,  
Sgd. E V.Tavai  
(E.V.TAVAI)  
ASSISTANT SECRETARY

EVT:mks

EXHIBITS

D1

NOTICE REQUIRING PAYMENT OF  
MONEY DUE UNDER MORTGAGE  
10th February 1970

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EXHIBITS

D1

Notice  
requiring  
payment of  
money due  
under  
Mortgage

10th February  
1970

TO: CHANDRIKA PRASAD (son of Gudulal) of  
Tabia, Labasa, Cultivator and Driver.

10 WHEREAS you are the Mortgagor named and  
described in the Memorandum of Mortgage dated  
the 22nd day of February, 1968 of which  
GULJARA SING (son of Hari Singh) of Tabia,  
Labasa in the Colony of Fiji, Licensed Money-  
lender is (hereinafter called "the Mortgagee")  
the Mortgagee securing the sum of \$3,296.66  
(THREE THOUSAND TWO HUNDRED AND NINETY SIX  
DOLLARS AND SIXTY-SIX CENTS) being principal,  
further advances and interest thereon as  
provided in the said Mortgage

20 AND WHEREAS you agreed and covenanted  
under the said Mortgage to repay the said  
principal, further advances and interest  
UPON DEMAND AND WHEREAS you have defaulted  
in the due payment of the said moneys upon  
demand and there is now due and owing the said  
sum of \$3,296.66 (THREE THOUSAND TWO HUNDRED  
AND NINETY SIX DOLLARS AND SIXTY-SIX CENTS) and  
further interest accrues thereon at the rate of  
\$1.01 (ONE DOLLAR AND ONE CENT) per day.  
30 NOW THEREFORE TAKE NOTICE that consequent upon  
such default demand is made upon you for the  
immediate payment of the said moneys  
AND FURTHER TAKE NOTICE that if you default in  
the due payment of the moneys as are endorsed  
hereunder and such default continues for the  
space of one (1) month after the service upon  
you of this Notice then the Mortgagee will  
exercise his powers of sale or otherwise deal  
with the land the subject of the said Mortgage  
pursuant to the powers under the same.

40 DATED at Labasa this 10th day of February, 1970

Sgd. K. Chauhan

The Mortgagee and or his  
solicitor and duly authorised  
agent K. Chauhan

EXHIBITS

D3  
Contract,  
Chandrika  
Prasad to  
Guljara Singh  
16th November  
1967

EXHIBITS

D3  
CONTRACT, CHANDRIKA PRASAD  
TO GULJARA SINGH - 16th  
November 1967

MEMORANDUM OF CONTRACT  
MONEYLENDERS ORDINANCE

BORROWER: CHANDRIKA PRASAD s/o Gudulal of Tabia, Labasa, Cultivator

LENDER: GULJARA SINGH s/o Hari Singh of Tabia, Labasa, Licensed Moneylender 10

DATE OF LOAN: 16th day of November, 1967

PRINCIPAL SUM: The sum of £754.0.0 owing under Crop Lien book 67/1308 and promissory notes numbers 82242 dated 26th July, 1967 and 83860 dated 19th September, 1967 and the sum of £150.0.0 this day advanced.

INTEREST: 12% per annum. 20

Terms of Contract DATED at Labasa this 16th day of November, 1967.

SIGNED by the said CHANDRIKA PRASAD )  
after the contents hereof had been )  
first read over and explained to )  
him in the Hindustani language and ) Sgd. Chandrika  
he appeared fully to understand the ) Prasad  
meaning of the same in my presence )

Sgd. K. Chauhan  
Solicitor, Labasa

SIGNED by the said GULJARA SINGH ) 30  
after the contents hereof had )  
been first read over and explained ) GULJARA SINGH  
to him in the Hindustani language ) (His Left Thumb  
and he appeared fully to under- ) Mark)  
stand the same in my presence )

Sgd. K. Chauhan  
Solicitor, Labasa

The Borrower hereby acknowledges :-

(a) That the Memorandum was signed by him before acknowledgment of the indebtedness of the sum of £754.0.0 owing under Crop Lien book 40

67/1308 and promissory notes numbers  
82242 dated 26th July, 1967 and 83860  
dated 19th September, 1967 and receiving  
the sum of £150.0.0 in cash.

EXHIBITS

D3  
Contract,  
Chandrika  
Prasad to  
Guljara  
Singh

16th  
November  
1967

(continued)

- (b) That a copy of the Memorandum authenticated  
by the lender was received by him before  
the indebtedness of the sum of £754.0.0  
was acknowledged and the sum of £150.0.0  
advanced.
- 10 (c) That the Mortgage referred to in the  
Memorandum was executed by him after they  
had signed the Memorandum;
- (d) The indebtedness of the sum of £754.0.0  
was acknowledged and the sum of £150.0.0 was  
paid.

DATED at Labasa this 16th day of November, 1967

SIGNED by the said CHANDRIKA )  
PRASAD after interpretation )  
in my presence )

CHANDRIKA PRASAD

20

Sgd. K. Chauhan

EXHIBITS

D4  
Mortgage,  
Chandrika  
Prasad to  
Guljara Singh  
16th November  
1967

EXHIBITS

D4  
MORTGAGE, CHANDRIKA PRASAD  
TO GULJARA SINGH - 16th  
November 1967

F I J I

M O R T G A G E  
MUST BE IN DUPLICATE

THE INSTRUMENT OF TITLE MUST BE PRESENTED  
HEREWITH. RULE UP ALL BLANKS BEFORE SIGNING. 10  
NO ALTERATION SHOULD BE MADE BY ERASURE. THE  
WORDS REJECTED SHOULD BE SCORED THROUGH WITH  
A PEN AND THOSE SUBSTITUTED WRITTEN OVER THEM,  
THE ALTERATION BEING VERIFIED BY SIGNATURE OR  
INITIALS IN THE MARGIN OR NOTICED IN THE  
ATTESTATION. ALL NAMES MUST BE TYPED OR PRINTED.

I CHANDRIKA PRASAD (father's name Gudhulal)  
of Tabia, Labasa in the Colony of Fiji,  
Cultivator hereinafter called the mortgagor 20  
being registered as proprietor subject however  
to such Mortgages and encumbrances as are  
notified by Memorandum underwritten or endorsed  
hereon of the piece of land described as  
follows :-

Instru- ment of Title	Number	Descrip- tion	Province or Island	District or Town	AREA A. R. P.	Undi- vided Share
N.L.	4/9/1135	DELAIVUILOQI	MACUATA	SASA	11 $\frac{3}{4}$ - -	Whole

IN CONSIDERATION of the sum of £684.0.0 (SIX  
HUNDRED AND EIGHTY-FOUR POUNDS) owing by me to 30  
GULJARA SINGH (f/n Hari Singh) of Tabia, Labasa  
Licensed Moneylender (hereinafter called "the  
Mortgagee") under a certain Crop Lien Book  
67 Folio 1308 dated 5th July, 1967, the sum of  
£70.0.0 (SEVENTY POUNDS) under certain  
Promissory Notes Nos.83860 of 19/9/67 and  
82242 of 26/7/67 the indebtedness whereof I  
hereby admit and acknowledge AND IN CONSIDERATION  
of the sum of £150.0.0 (ONE HUNDRED AND FIFTY  
POUNDS) this day advanced to me by the said  
Guljara Singh making the total advance to me 40  
in the sum of £904.0.0 (NINE HUNDRED AND FOUR  
POUNDS) the receipt of which sum the mortgagor  
hereby acknowledges doth hereby covenant with  
the mortgagee



FIRSTLY that the mortgagor will pay to the mortgagee the above sum of NINE HUNDRED AND FOUR POUNDS) UPON DEMAND

EXHIBITS

D4

Mortgage,  
Chandrika  
Prasad to  
Guljara Singh

16th November  
1967

(continued)

SECONDLY that the mortgagor will pay interest on the said sum at the rate of ten pounds (£10.0.0) by the £100 in the year as follows:

10 THIRDLY The Mortgagor will continue to pay interest under this mortgage after the expiry of this mortgage should the principal moneys hereby secured be not paid and any interest accruing due after such term shall be deemed to be secured by this mortgage.

FOURTHLY The Mortgagor further agree that all interest unpaid by at due date shall be added to the principal sum and carry interest after the rate aforesaid provided always that nothing herein contained in this paragraph shall take away the powers of foreclosure for non-payment of interest.

20 FIFTHLY The Mortgagee shall have the right to hold the title deeds of the lands hereby mortgaged until all sums due by to the said Mortgagee are fully paid up with interest.

30 SIXTHLY In the event of foreclosure and sale under this security if the property hereby mortgaged shall fail to realise the amount due for principal and interest at such date together with the cost charges and expenses of such foreclosure the Mortgagor will forthwith pay to the Mortgagee such balance of principal and interest and cost charges and expenses as shall be required to pay the same in full.

SEVENTHLY It is hereby agreed that the term "one calendar month" referred to in Section 61 of the Land (Transfer and Registration) Ordinance (Cap.136) shall for all purposes of this security be reduced to "seven days".

40 EIGHTHLY The Mortgagor will insure and keep insured against fire during the continuance of this mortgage in the name of the Mortgagee the buildings erected or which may hereafter be erected on the lands hereby mortgaged in their full insurable value in some insurance Company to be approved by the Mortgagee and will punctually pay the premiums thereon when due and will hand

EXHIBITS

D4  
Mortgage,  
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1967

the receipts for same to the Mortgagee immediately upon the issue thereof and the Mortgagor agree that in the event of failing to pay the said premiums or any of them the Mortgagee may in absolute discretion pay the same and all moneys so paid by the Mortgagee shall be covered by this security and bear interest at the rate aforesaid until repaid to the Mortgagee.

(continued)

NINTHLY The Mortgagor will at all times during the continuance of this security duly and punctually pay all rents rates taxes charges duties assessments and all other impositions whatsoever now charged or which may hereafter be charged upon the said mortgaged premises or any part thereof or upon the owner or occupier thereof in respect thereof or any part thereof and in case the Mortgagor shall at any time fail to keep the said premises in good tenantable repair and order or to duly or punctually pay all such rent rates taxes charges duties assessments or other impositions as aforesaid it shall be lawful for but not obligatory upon the Mortgagee to execute pay effect and keep up all such repairs rates duties rents assessments and impositions as aforesaid and all moneys paid in respect thereof shall be debited and charged to the Mortgagor and bear interest after the rate aforesaid from the date of payment and shall immediately thereupon be and become payable by the Mortgagor to the Mortgagee and shall until repayment be covered by this mortgage.

10

20

30

and for the better securing to the mortgagee the repayment in manner aforesaid of the principal sum and interest, the mortgagor hereby MORTGAGES to the mortgagee the land above described.

IN WITNESS whereof I/we have hereto signed my/our name this 16th day of November 1967

40

Sgd. Chandrika Prasad  
Signature or left thumb mark of  
the Mortgagor

THE signature by mark of CHANDRIKA PRASAD was made in my presence and I verily believe that such signature is/are of the proper handwriting/left thumb mark of the person described as CHANDRIKA PRASAD son of Gudu Lal of Tabia, Labasa, in the Colony of Fiji, Cultivator the Mortgagor and I certify that I read over and explained the contents hereof to the Mortgagor

50

in the Hindustani language and the Mortgagor appeared fully to understand the meaning and effect thereof.

Sgd. K Chauhan  
Solicitor, Labasa

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

Sgd. K.Chauhan  
Solicitor for the Mortgagee

EXHIBITS

D4  
Mortgage,  
Chandrika  
Prasad to  
Guljara Singh

16th November  
1967

(continued)

10 MEMORANDUM OF MORTGAGES AND ENCUMBRANCES  
ETC.

MORTGAGEE'S UNDERTAKING

20 I, the undersigned GULJARA SINGH (son of Hari Singh) of Tabia, Labasa, in the Colony of Fiji, Cultivator and Licensed Moneylender the within described Mortgagee HEREBY ACKNOWLEDGE AND UNDERTAKE that in the event of it becoming it necessary to exercise the powers of sale under the provisions of section 63 of the Land (Transfer & Registration) Ordinance Cap.136 and to grant any tenancy or lease under the said powers contained in the within mortgage and such transfer tenancy or lease in exercise of any such power of sale will require the prior consent of the Director of Lands in writing as lessor of the within described Native Lease 4/9/1135.

DATED at Labasa this 16th day of November, 1967

30 GULJARA SINGH (His left  
thumb mark)

Witness to signature after interpretation

Sgd. K.Chauhan  
Solicitor, Labasa

And for the better securing to the mortgagee the repayment in manner aforesaid of the principal sum and interest, the mortgagor hereby MORTGAGES to the mortgagee the land above described

IN WITNESS whereof I/we have hereto signed my/our

EXHIBITS

name this 16th day of November 1967

D4  
Mortgage,  
Chandrika  
Prasad to  
Guljara  
Singh  
16th  
November  
1967

Sgd. CHANDRIKA PRASAD  
Signature or left thumb mark of the Mortgagor

The signature by mark of CHANDRIKA PRASAD was made in my presence and I verily believe that such signature is/are of the proper handwriting/ left thumb mark of the person described as CHANDRIKA PRASAD son of GUDHULAL of Tabia, Labasa, in the Colony of Fiji, Cultivator

10

(continued)

The Mortgagor and I certify that I read over and explained the contents hereof to the Mortgagor in the Hindustani language and the Mortgagor appeared fully to understand the meaning and effect thereof.

Sgd. K. CHAUHAN  
Solicitor, Labasa

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

20

Sgd. K. CHAUHAN  
Solicitor for the Mortgagee

To be made before any of the functionaries as set out in note (h) Not required if the instrument itself be signed before one of these parties

10

FORM OF DECLARATION BY ATTESTING WITNESS

Appeared before me at ..... the ..... day of ..... one thousand nine hundred and ..... the attesting witness to this instrument and declared that he personally knew ..... the person signing the same, and whose signature the said ..... attested, and that the name purporting to be the signature of the said ..... as his own handwriting and that he is the person therein described as ..... of .....

EXHIBITS

D4 Mortgage, Chandrika Prasad to Guljara Singh 16th November 1967

(continued)

PUBLIC TRUSTEE | MORTGAGE | to | DATED | 19

20

THE WITHIN WRITTEN MORTGAGE IS HEREBY WHOLLY DISCHARGED

IN WITNESS whereof I/we have hereto signed my/our name this ..... day of ..... 19

..... Signature or left thumb mark of the Mortgagor

30

The signature by mark of was made in my presence and I verily believe that such signature is/are of the proper handwriting/left thumb mark of the person described as the Mortgagee and I certify that I read over and explained the contents hereof to the Mortgagee in the ..... language and the Mortgagee appeared fully to understand the meaning and effect thereof.

EXHIBITS

D5  
Application  
for Consent  
to a dealing  
(Undated)

EXHIBITS

D5  
APPLICATION FOR CONSENT  
TO A DEALING (Undated)

FORM 3 (Regulation 35)

APPLICATION FOR CONSENT TO A DEALING  
(Native Land (Leases and Licences)  
Regulations, Cap.104)

PART I

TO THE SECRETARY, NATIVE LAND TRUST BOARD, SUVA 10

Sir,

I, CHANDRIKA PRASAD s/o Gudulal hereby  
apply for consent to a 4/9/1135 in respect of  
Mortgage and submit the statement in Part II  
hereof concerning the proposed dealing, and  
I certify that the information contained  
therein is correct.

Name, Address and occupation of proposed  
Purchaser/Transferee/Sublessee/Mortgagee:

GULJARA SINGH s/o Hari Singh of 20  
Tabia, Labasa, Moneylender

Colonial Sugar Refining Company Limited  
Contract No. (if cane land subject to such  
contract)

Consideration in respect of  
of sale. Rent in respect of  
of tenancy. Amount of loan) £904.0.0 (Nine  
and rate of interest in ) hundred and four  
respect of mortgage ) pounds)

(Signature) Chandrika Prasad 30  
Vendor/Transferor/Sublessor/  
Mortgagor

Witness: Sgd. R. Rattan

STATEMENT OF THE PURCHASER, TRANSFEREE,  
SUBLESSEE, MORTGAGEE

I, GULJARA SINGH s/o Hari Singh of Tabia,  
Labasa, hereby certify -

1. That I have read the statement of the  
Vendor/Transferor/Sublessor/Mortgagor  
and agree that it is correct. 40

2. That the following other lands held by me or my wife/husband are as follows (not required in any statement by a prospective mortgagee) :-

EXHIBITS  
D5  
Application for Consent to a dealing (Undated) (continued)

Title Reference	Area	Estimated Value
.....	.....	£.....
.....	.....	£.....
.....	.....	£.....
.....	.....	£.....

Witness: Sgd. R. Rattan  
(Signature) GULJARA SINGH  
(His left thumb mark)

EXHIBITS

D6  
Instructions for Preparation of Mortgage 16th November 1967

D6  
INSTRUCTIONS FOR PREPARATION OF MORTGAGE - 16th November 1967

20 INSTRUCTIONS

I, the undersigned CHANDRIKA PRASAD (son of Gudulal) of Tabia, Labasa Cultivator hereby instruct Mr. K.Chauhan Solicitor, Labasa to prepare mortgage over Approval Notice 4/9/1135 as follows :-

1. £684-0-0 secured by Crop Lien and 70-0-0 under Promissory Notes and the sum of £150-0-0 this day cash advanced making the total sum of £904-0-0 (Nine hundred and four pounds).
2. I undertake to pay the sum of £70-0-0 (Seventy pounds) agreed fee.

DATED at Labasa this 16th day of November, 1967.

EXHIBITS

Sgd. Chandrika Prasad

D6  
Instructions  
for Preparation  
of  
Mortgage  
16th November  
1967  
(continued)

Witness to signature after  
interpretation,  
Sgd. R. Rattan  
Clerk, Labasa

D7  
Letter,  
Gibson & Co.  
to K. Chauhan  
17th March  
1970

EXHIBITS

D7

LETTER, GIBSON & CO. TO  
K. CHAUHAN - 17th March  
1970

10

GIBSON & COMPANY  
Barristers & Solicitors

LABASA,  
ISLAND OF VANUALEVU  
FIJI

17th March, 1970

K. Chauhan, Esq.,  
Solicitor,  
LABASA.

Dear Sir,

re: Chandrika Prasad  
f/n Gudu Lal

20

We refer to our letter dated 30th  
September, 1969 (a copy of which is attached  
hereto) but to date we have not received any  
reply.

The abovenamed has further instructed us  
to request you to supply us with a copy of  
all the documents made by the abovenamed or  
any security given therefor by the abovenamed  
to your client and we enclose herewith the  
sum of .25¢ (Twenty Five Cents) being for  
expenses as required by Moneylenders Ordinance.

30

May we have the documents at your earliest  
convenience, and oblige.

Encls: Chq.

Yours faithfully,  
Gibson & Company  
per M. Sadig



17th September, 1969

EXHIBITS

D7

Attached  
to Letter,  
Gibson & Co.  
to K. Chauhan

17th March  
1970

(continued)

Mr. Chandrika Prasad s/o Gudulal,  
Tabia,  
LABASA.

Dear Sir,

re: Guljara Singh s/o Haris Singh  
Crop Lien Book 67 Folio 1308

10 This is to confirm that you have despite repeated requests made to you by the above-named Creditor, my clerk Kalika Prasad and myself personally, the undersigned, failed to renew the abovementioned Crop Lien. You made several false promises and still flagrantly persist to do so with the object of defeating my client's security.

20 TAKE NOTICE therefore that unless you call at my office within one (1) hour from the receipt hereof and renew the said Crop Lien my instructions are, inter alia, to report the matter to the police for your criminal prosecution.

Yours faithfully,

K. CHAUHAN

EXHIBITS

D8  
Acknowledg-  
ment of receipt  
of notice  
19th September  
1969

EXHIBITS

D8  
ACKNOWLEDGMENT OF RECEIPT  
OF NOTICE - 19th September  
1969

I, the undersigned CHANDRIKA PRASAD (son of Gudulal) of Tabia, Labasa driver and Cultivator hereby state as follows :

That I admit receiving notice dated 17th September, 1969 to day the 19th September, 1969 9.00 am by Suraj Narayan clerk of Mr. Chauhan. I admit owing to Guljara Singh son of Hari Singh in the sum of £1397.9.0 under mortgage and Crop Lien together with all further advanced made to me by said Guljara Singh and all interest thereon. I specifically promise Mr. K.Chauhan and Guljara Singh that I will come to Mr. Chauhan's office on the 22nd September, 1969 to renew the said documents, after payment of \$400.00 in reduction of the said indebtedness. 10 20

DATED at Labasa this 19th September, 1969.

Witness to signature Sgd. C. Prasad  
after interpretation,  
Sgd. K.Prasad  
Clerk, Labasa

D9  
Instructions  
by Chandrika  
Prasad for  
application  
for consent  
to Mortgage  
22nd February  
1969

EXHIBITS

D9  
INSTRUCTIONS BY CHANDRIKA PRASAD  
FOR APPLICATION FOR CONSENT TO  
MORTGAGE - 22nd February 1969

30

INSTRUCTIONS

I, the undersigned CHANDRIKA PRASAD (son of Gudulal) of Tabia, Labasa Cultivator hereby instruct Mr. K.Chauhan Solicitor Labasa to apply for consent to a mortgage in respect of land known as N.L.T.B. No.4/9/1135 Delaivuilloqa in favour of Guljara Singh son of Hari Singh of Tabia, Labasa Licensed Moneylender and prepare the mortgage and execute the same in 40

in the following manner.

EXHIBITS

Mortgagee: GULJARA SINGH s/o Hari Singh  
Mortgagor: CHANDRIKA PRASAD s/o Gudulal  
Due Date: UPON DEMAND  
Interest: 12% per annum  
Consideration: £1397.9.0 made up as follows:

10 Under Crop Lien book 67  
folio 1308 £684-0-0  
Under P/n No.83860 19/9/67,  
" " No.82242 26/7/67  
and  
" " No.83882 14/12/67  
total 100-0-0  
Cash advanced on 16/11/67 150-0-0  
This day lent and advanced 463-9-0  

---

£1397. 9.0

D9  
Instructions  
by Chandrika  
Prasad for  
application  
for consent  
to Mortgage  
22nd February  
1969  
(continued)

SEARCH: Not required.

20 IMPROVEMENT: 3 bures £300-0-0  
1 Iron &  
Bamboo  
house  
18' x 12' 200-0-0  
4 acres  
ratoon 300-0-0  
6 acres  
plant 600-0-0

DATED at Labasa this 22nd day of February, 1968.

30 Witness to signature Sgd. Chandrika Prasad  
Sgd. K.Prasad  
Clerk, Labasa

EXHIBITS

D10

Application  
for consent  
to a dealing  
(Undated)

EXHIBITS

D10

APPLICATION FOR CONSENT  
TO A DEALING (Undated)

FORM 3 (Regulation 35)

APPLICATION FOR CONSENT TO A DEALING  
(Native Land (Leases and Licences)  
Regulations, Cap.104)

PART I

TO THE SECRETARY, NATIVE LAND TRUST BOARD, SUVA 10

Sir,

I, CHANDRIKA PRASAD (s/o Gudulal) hereby  
apply for consent to a mortgage in respect of  
N.L.T.B. NL. 4/9/1135 Delaivuiloga and submit  
the statement in Part II hereof concerning the  
proposed dealing, and I certify that the  
information contained therein is correct.

Name, address and occupation of proposed  
Purchaser/Transferee/Sublessee/Mortgagee:

GULJARA SINGH (son of Hari Singh) 20  
of Tabia, Labasa Licensed Moneylender

Colonial Sugar Refining Company Limited  
Contract No. (if cane land subject to such  
contract) 4020

Amount of loan and rate) £1397.9 (One thousand  
of interest in respect } three hundred and  
of mortgage } ninety-seven Pounds and  
} nine shillings)  
} together with interest  
} thereon at the rate of 30  
} 10% per annum.

(Signature) Chandrika Prasad  
Vendor/Transferor/Sublessor/  
Mortgagor

Witness: Sgd K. Chauhan  
Solicitor, Labasa

STATEMENT OF THE PURCHASER, TRANSFEREE, SUBLESSEE,  
MORTGAGEE

I, GULJARA SINGH (son of Hari Singh) of Tabia,

Labasa, hereby certify -

EXHIBITS

1. That I have read the statement of the Vendor/Transferor/Sublessor/Mortgagor and agree that it is correct.
2. That the following other lands held by me or my wife/husband are as follows (not required in any statement by a prospective mortgagee) :-

D10  
Application  
for consent  
to a dealing  
(Undated)  
(continued)

10	Title Reference	Area	Estimated Value
	nil.		£

(Signature) GULJARA SINGH  
(His left thumb  
mark)

Witness: Sgd. K.Chauhan  
Solicitor, Labasa.

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

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B E T W E E N :

CHANDRIKA PRASAD s/o Guddulal

Appellant  
(Plaintiff)

- and -

1. GULJARA SINGH s/o Hari Singh
2. NATIVE LAND TRUST BOARD
3. SHIU PRASAD s/o Suchit Bhagat
4. BRIJ NATH s/o Hardeo
5. CHANDRIKA PRASAD s/o Halka

Respondents  
(Defendants)

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RECORD OF PROCEEDINGS

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PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
Westminster,  
London, SW1E 6HB

Solicitors for the Appellant