

[2017] UKFTT 0052 (PC)

REF/ 2016/0515

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

IMRAN GARRIB

APPLICANT

and

(1) PALWONTEE LALLBEEHARRY
(otherwise Lallbeeharry Palwontee)

(2) THE ROYAL BANK OF SCOTLAND

RESPONDENTS

Property Address: 17 St. James Road, London E15 1RL

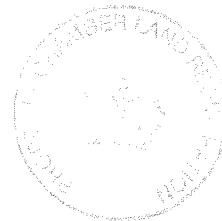
Title Number: EGL213656

ORDER

The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicant, Imran Garib to alter the register dated 22 June 2015.

Dated this 5th December 2017

Michael Michell



BY ORDER OF THE TRIBUNAL

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Property Address: 17 St. James Road, London E15 1RL
Title Number: EGL213656

Before: Judge Michell

Sitting at: Alfred Place, London

On: 22nd August 2017

Applicant Representation: Mr David Giles, counsel, instructed by Khan & Co., solicitors
First Respondent Representation: Ms Ana Huneewoth, solicitor
Second Respondent Representation: Miss Tricia Hemans

DECISION

Cases referred to

Argyle Building Society v. Hammond (1984) 49 P&CR 148

Sainsbury's Supermarkets Ltd. V. Olympia Homes Ltd. [2005] EWHC 1235 (Ch).

1. Mr Imran Garrib has applied to HM Land Registry to alter the title to 17 St. James Road, London E15 1RL (“the Property”) to have his name substituted for that of “Lallbeeharry Palwontee” as registered proprietor and to remove the charge registered in favour of The Royal Bank of Scotland (“the Bank”). The First Respondent objected to the application and took part in the proceedings up to the time of the trial using the name “Lallbeeharry Palwontee”. However, at the hearing it became clear that “Palwontee” is her first name and “Lallbeeharry” is the family name. I shall refer to her in this Decision as “Ms Lallbeeharry”. Following the receipt of objections to the application from both Ms Lallbeeharry and the Bank, HM Land Registry referred the matter to the Tribunal for determination. Following a hearing in which I heard oral evidence and documentary evidence was produced, the parties filed written submissions.

The Facts

2. The Applicant is a panel-beater who lives in Triolet, Mauritius. He first visited the United Kingdom in 1989. Thereafter he visited London in 2006 and 2008. He has three uncles, all of whom feature in the events leading to these proceedings. Swaleb Garrib is the eldest of the uncles. Azad Garrib is married to Ms Lallbeeharry. The third uncle is Showkut Garrib. Only Swaleb gave evidence in the proceedings, though the evidence of Azad and Showkut would have been highly material.

3. The Property is a four-bedroom, four reception room mid-terrace house in Stratford, east London. The Property was purchased in the early 1980s by Mr Swaleb Garrib, an uncle of the Applicant. The Applicant was registered as proprietor of the Property on 22nd April 2003 on the registration of a transfer of title to him dated 15th April 2003 by Swaleb. The Applicant said in an affirmation made by him in proceedings in the Supreme Court of Mauritius dated 10th November 2016 that Swaleb telephoned him and “obtained my free consent for the transfer in my name of his own property”. The Applicant repeated this in his oral evidence to the Tribunal. He said that Swaleb told him he was having a problem with his

wife because she wanted him to sell the Property and he didn't want to sell. Swaleb proposed transferring the Property into the name of the Applicant. The Applicant said that was fine with him. The price stated to have been paid on 15th April 2003 was £36,000. On 15th April 2003 Swaleb signed a mortgage of the Property in the name of the Applicant to Kensington Mortgage Company Limited. It appears on the face of the mortgage deed that the signature was witnessed by Isaiah Arawole of City Law Practice Solicitors of City Road, London. The witness signed below the words "The Borrower(s) identity must be checked before their signature is separately witnessed". Swaleb said that he gave his name as "Imran Garrib" and signed in the Applicant's name.

4. The Applicant gave an explanation in re-examination as to why Swaleb had transferred the Property into his name. He said that Swaleb's wife wanted him to sell the Property but that Swaleb wanted to keep it so that he could use it to help family members if they needed help, by raising money on the Property and using that to help a family member. Swaleb trusted the Applicant as he was his nephew. Swaleb thought that the Applicant would not sell the Property or "do anything wrong". By transferring the Property to the Applicant, Swaleb was "keeping" the Property so that he could use it to help family members if necessary.

5. Swaleb gave evidence. He confirmed that his wife wanted him to sell the Property and he did not want to do so. He said that he put the Property into the Applicant's name so that he did not have to sell it. Later in cross-examination, Swaleb said that he put the Property in the Applicant's name so that he did not lose the Property. Swaleb said that he did not inform the Applicant he had put the Property into the Applicant's name until some months, perhaps as much as a year, after he had done so. In cross-examination, Swaleb agreed that he still considered the Property to be his after he had put it in the name of the Applicant.

6. On 21st August 2006 the Property was purportedly mortgaged by the Applicant to GE Money Secured Loans Limited. Both Swaleb and the Applicant said that Swaleb signed the mortgage in the name of the Applicant. Swaleb said that he was not asked to produce identification and gave his name as Imran. The name of the proprietor of this charge was changed to Bank of Ireland on 25th October 2007. The Applicant accepts that he did not receive any of the money raised by Swaleb mortgaging the Property in the Applicant's name.

7. On 1st September 2006 “Palwontee Lallbeeharry” was married to Azad in a civil ceremony in East Ham, London. They had met in 1979 in Mauritius. Azad had married Bibi Moorad on 31st May 1993 in Mauritius. The Applicant produced a certified extract of a marriage entry under the Republic of Mauritius Civil Status Act 1981 stating that one Azad Garrib was married to Zohra Bibi Makieck Amode Moorad on 31st May 1993. Ms Lallbeeharry said that she did not know Azad had been married in Mauritius. He had told her before their wedding that he had a first wife in the United Kingdom but had divorced her. Mrs Lallbeeharry had been married before and divorced in Mauritius. In the marriage certificate, Azad’s marital status was given as “single” and “Palwontee Lallbeeharry”’s status was recorded as “previous marriage dissolved”. Ms Lallbeeharry’s father’s surname is recorded in the certificate as “Lallbeeharry” but Lallbeeharry was the name of Ms Lallbeeharry’s first husband and not her maiden name. That was “Kowal”. Ms Lallbeeharry was unable when giving evidence to remember the year in which she was married to Azad. She thought it was in 2009 because it was in 2011 that she obtained a British passport and she thought that she had obtained the visa on the basis that she had been resident in the United Kingdom for two years.

8. On 9th February 2007 the Applicant executed a power of attorney in favour of his brother, Joned Garrib. Joned said that he first came to the United Kingdom in 1976 when he was 15 years old. Later he studied for a postgraduate diploma in IT studies in Teesside. The address of Joned Garrib was given as 33 Lea View House, London E5. The power of attorney included the following clauses

- “1. My Attorney will be authorised to deal with property known as 17 St. James Road, Stratford...
2. I authorise my above attorney to collect rent on my behalf from the tenants, make any decisions on the general maintenance of the property, pay the bills due for the property and ensure the mortgage payment is made promptly. He is also authorised to deal with any problems arising with my mortgage on my behalf.
3. My attorney is authorised to execute any documentation and action deemed necessary for the conduct of his duties”.

The power of attorney bears the stamp of Nazakat Ali, solicitor and commissioner of oaths of Ali Sinclair Solicitors, of Upton Park, London E6. The Applicant’s signature was witnessed

by Cabeer Ahmed and Roman Kousar after the Applicant had produced his Mauritian passport as identification.

9. Joned managed the Property in the absence from the country of the Applicant. He collected rent. The Property was let out room by room. There were 6 or 7 bedrooms and on average the rents totalled £1800 to £2000 per month. The mortgage was about £500 per month. Joned said that the rental monies were used to pay the mortgage, the bills for the house and that on 2 occasions he and the Applicant did major works to the property funded by the rent monies. No rent monies were sent to the Applicant.

10. In August 2009 Joned Garrib left the United Kingdom and travelled to Mauritius to get married. He returned to the United Kingdom in September 2009.

11. Ms Lallbeeharry had no direct communications with the Applicant at all, though she knew him as her nephew by marriage. Her evidence is that Azad told her that the Applicant wanted to sell the Property and that if she had the money to buy it, “they” would sell it to her. By “they” she meant the Applicant and his uncles. Later in her evidence, Ms Lallbeeharry said that Swaleb wanted to sell the Property and that her husband discussed with Swaleb the sale of the Property. Ms Lallbeeharry said that she did not know the price Azad agreed with Showkut for the Property. Ms Lallbeeharry said that she trusted Azad but did not know what was going on. The agreement to sell and for her to buy was made between the family.

12. On 8th July 2009 Ms Lallbeeharry made an application to the Bank for a mortgage loan of £187,500 (plus fees giving a total of £188,499) for a term of 16 years to be secured on the Property. Mrs Lallbeeharry said that Azad helped her with the application. He went with her to a mortgage brokers at an office in Stratford. He helped her to explain what she wanted and to read the forms. When asked in cross-examination how much she was trying to borrow, Mrs Lallbeeharry said “the value of the Property”. In the application form, Mrs Lallbeeharry described the Property as having 6 bedrooms and gave the “purchase price/valuation” as £250,000. Mrs Lallbeeharry said in cross-examination that Azad had agreed the price at £250,000. Later in cross-examination she said that she did not know what price was agreed. Ms Lallbeeharry described her marital status in the mortgage application as “separated”. She gave her address as “34 Woodstock Road, London E7 8ND” and claimed to be living with her parents. She stated that she had no dependants even though she had a son then aged 16 or 17

whom she described at one point in cross-examination as being dependent on her. The form stated her mother's name to be "Bibi". She gave her occupation as manager of Anita Business Centre in Green Street, London E13 and her gross annual salary as £38,900. She stated the nature of the business was "sales" and that the business began in 1999. In fact Ms Lallbeeharry was a hairdresser and incorporated a company, "Anita's Hair and Beauty Salon Ltd" on 25th May 2007. She accepted in cross-examination that her business began in May 2007. She accepted that she was not paid £39,000 a year but said that in a good year she received £5,000. The selling agents were given as "Premier Property" of London E15 4FR. The name of her solicitor was given as S Subajini of Jacobs Solicitors, London E6 2JX. On the application form she was said to be on the electoral roll.

13 The Applicant produced the result of a search of the register of companies maintained by Companies House for "Anita's Hair and Beauty Salon Limited" of 404 Romford Road, London E7 which gives the name of the director of the company as at 25th May 2007 as "Mrs Lallbeeharry Palwontee".

14. The Bank obtained a mortgage valuation report dated 27th July 2009. The valuer reported that the Property was being used as a house in multiple occupation and had to be registered as an HMO under the Housing Act 2004 but was unlikely "in the extreme" to meet the fire, building and planning regulations. The valuer described the Property as being in poor condition. He valued the Property at £190,000.

15. On 31st July 2009 the Bank offered to lend Ms Lallbeeharry £142,500 (plus fees of £999) on an interest-only basis for a term of 16 years. The Bank reissued the mortgage offer on 7th September 2009. Ms Lallbeeharry was unable to say in cross-examination if the parties agreed to reduce the price when the Bank agreed to lend only £142,500. However, on 7th September 2009 the Bank wrote to Jacobs Solicitors stating that they had agreed to make a loan to Ms Lallbeeharry of £142,500 for the purchase of the Property and that the purchase price was £190,000. Ms Lallbeeharry in cross-examination said that she did not know anything about the reduction in the purchase price.

16. Ms Lallbeeharry said that her daughter took out a loan and with the loan monies gave her £30,000 and that she had £10,000 of her own money. Later she said that her daughter gave her £50,000. Mrs Lallbeeharry said that she gave £65,000 to Showkut to give to the

Applicant. She also said that half the money was given to the Applicant and half to Showkut. She then said that Showkut received cash to give to the Applicant and that Showkut was given a property in Mauritius belonging to Azad. She said that she gave £65,000 to Woodgrange Solicitors who were "Showkut's" solicitors. Ms Lallbeeharry was unable to explain why Showkut was involved in the transaction at all. She said just that the brothers met and did business together. Ms Lallbeeharry was unable to explain why the transfer of the Property in form TR1 stated the consideration received by the transferor to have been £142,500.

17. On 16th September 2009 Ms Lallbeeharry executed a deed of legal charge of the Property in favour of the Bank. On 14th October 2009 Ronald Jacobs of Jacobs Solicitors signed a certificate of title addressed to the Bank. The certificate gave the completion date as 16th October 2009 and the price stated in the transfer to be £142,500. A transfer dated 22nd October 2009 of the Property to Ms Lallbeeharry in the name "Palwontee Lallbeeharry" was executed by Showkut expressly "acting as attorney for Imran Garrib". Ms Lallbeeharry Palwontee was registered as proprietor of the Property on 10th November 2009 and the charge in favour of the Bank was registered on the same day.

18. With the application to register the transfer there was produced to Land Registry a Power of Attorney dated 18th June 2008 in favour of Showkut and purportedly executed by the Applicant in the presence of Cabeer Ahmed, solicitor of Ali Sinclair Solicitors of Upton Park, London and also witnessed by Sana Siddiqui. Cabeer Ahmed is the same solicitor who witnessed the Applicant's signature on the 2007 power of attorney in favour of Jonad. The 2008 power of attorney includes the following paragraph

"My Attorney will be authorised to deal with all aspects of my business and property known as 17 St. James Road, Stratford London E15 1RL on my behalf during my absence from the United Kingdom which include renting the property, selling the property, signing and executing any documents on my behalf relating to the property, appointing professionals for any part of the transactions to deal until such time as this power of attorney is legally revoked by me. My Attorney will also have the power to deal with the day to day aspects of my business during my absence from the United Kingdom".

The copy sent to Land Registry was certified to be a true copy of the original by Woodgrange solicitors of London E7. The Applicant was in the United Kingdom at the time of the date appearing on this Power of Attorney.

19. On 29th April 2016 Cabeer Ahmed, then principal solicitor at Hartley Bain Solicitors wrote to Ms Lallbeeharry's solicitors, having been shown a copy of the 2008 power of attorney, stating (1) that the signature on the power of attorney was his, (2) that the power of attorney was stamped with his stamp (3) that he did recall witnessing "Mr Garrib's" signature whilst at Ali Sinclair (4) that he would not have signed the power of attorney without Mr Garrib having been present (5) that he would have had sight of Mr Garrib's original passport and/or driver's licence to identify him and (6) that the other signature appeared to be that of Sana Siddiqui. Cabeer Ahmed sent an email to Ms Lallbeeharry's solicitors on 13 May 2016 in which he stated that the signature on the 2008 power of attorney appeared to be his signature and on 13 May 2016 he sent a further email in which he stated simply "I do recall witnessing both powers of attorney". The emails were exhibited to Ms Lallbeeharry's statement of case. Cabeer Ahmed was not called to give evidence and no party produced any witness statement made by him.

20. Ms Lallbeeharry said that she had seen the power of attorney when her husband told her that he had agreed for the purchase of the Property. She said that her husband showed her the power of attorney to show her that Showkut was allowed to sell. She said that she did not read the power of attorney but said that her husband pointed out Showkut's name and the power the Applicant had given to Showkut. Ms Lallbeeharry was unable to explain why her husband should have shown her the power of attorney but not told her the amount of the agreed purchase price. Ms Lallbeeharry's evidence was that she was not present when the power of attorney was signed and was not involved in its preparation.

21. Joned received a call towards the end of August 2009 from a tenant at the Property informing him that the hot water and electricity had been cut off. Joned said that he asked Showkut, who was an electrician and plumber to inspect. He said that Showkut called him a few days later to say the electricity suppliers had taken away the electricity meter. Joned asked Showkut to investigate why and report back to him but he received no call from Showkut. He said that he found out the tenants had left the Property when he returned to London. He then noticed that Bristol & West were not debiting the Applicant's account for the amount of the mortgage and so contacted Bristol & West. They told him that the mortgage had been redeemed. He then made enquiries of Land Registry and discovered that Ms Lallbeeharry had been registered as proprietor on 11th October 2009 and that the purchase

price was given as £142,500, which he described as being “alarming”. He telephoned the Applicant to tell him what had happened. He described the Applicant has being shocked by the news.

22. In cross-examination, the Applicant said that about two weeks after Jones called him, he contacted Azad and Showkut. In re-examination, he said that it was one week after being contacted by Jones that he telephoned Azad and Showkut. He said that he spoke once to Azad and spoke three or four times with Showkut. He did not give any clear evidence about what Azad or Showkut said to him in the telephone conversations. He did not give any explanation as to why he waited some time before calling Azad and Showkut.

23. The Applicant said that although he became aware of the change in registered proprietorship of the Property in 2009, he did nothing about it until June 2015 when he made a report to the police. He said that he had wanted to do something earlier but his mother had received threats from Showkut. He said that his mother was worried that Showkut might harm his brother and sister. His mother died in June 2014. There was then a further period of 7 to 8 months before the Applicant contacted HM Land Registry to enquire about altering the register. The Applicant said that Showkut had moved to Mauritius after the death of the Applicant’s mother and told the Applicant’s wife that he was responsible for the death and “nobody can touch me”.

24. Jones also gave evidence that his mother prevented the Applicant from taking steps over the transfer of the Property because Showkut threatened her and she was afraid for the well-being of her children. He also said that Showkut told him if he ever took any action against Showkut, Showkut would cripple his mother. Jones said that Showkut has a reputation for practising black magic and voodoo.

25. The Applicant accepted in cross-examination that it was quite possible that Ms Lallbeeharry knew nothing of the power of attorney of 2008 being a forgery.

26. Swaleb’s evidence was that he first learned of the transfer of the Property to Ms Lallbeeharry a few months after it happened. He met a person who lives in a house neighbouring the Property at an underground station and that person told him Azad and Ms Lallbeeharry were living in the Property. Swaleb had then telephoned Azad and Azad had

told him “we have got the property now”. Swaleb said that he told Azad the Property was a family house and asked him why he had transferred the Property house into his wife’s name. Azad had said that it did not make any difference. Swaleb said that he did not do anything because he did not want to fight with Azad.

27. Swaleb said that he knew the power of attorney in favour of Showkut was a forgery Showkut did not know how to read or write. Swaleb said that Azad asked him to tell a solicitor that the Applicant had signed the power of attorney in front of him and that he was there when Showkut signed. Swaleb said that he refused because he did not want to tell a lie.

28. Swaleb also gave evidence that he had witnessed a confrontation between the Applicant, Azad and Showkut in Forest Gate about a couple of years after the Property was registered in the name of Mrs Lallbeeharry. Azad had told the Applicant on that occasion that he had got the Property transferred into Mrs Lallbeeharry’s name and there was nothing the Applicant could do about it.

29. Ms Lallbeeharry is living at the Property and has been since before the application was made.

The Applicant’s Case

30. It is the Applicant’s case that he did not sign the power of attorney in favour of Showkut, he did not authorise Showkut to sell the Property to Ms Lallbeeharry and that he did not receive the purchase monies.

The Law

31. The registrar has power to alter the register under Schedule 4 to the Land Registration Act 2002. By paragraph 5(a) the registrar may alter the register for the purpose of correcting a mistake. Where the alteration involves the correction of a mistake and prejudicially affects the title of a registered proprietor then the provisions of paragraph 6 apply. Paragraph 6(2) provides

“No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor’s consent in relation to land in his possession unless –

- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or
- (b) it would for any other reason be unjust for the alteration not to be made”.

Paragraph 6(3) provides

“If on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the alteration”.

The burden of proving that the case falls within one of the exceptions in paragraph 6(2) lies on the party seeking rectification of the register against the registered proprietor in possession – *Sainsbury’s Supermarkets Ltd. V. Olympia Homes Ltd.* [2005] EWHC 1235 (Ch).

Mistake

32. The first question for me to decide is whether there a mistake on the register. There is a mistake on the register if Imran did not execute the power of attorney under which Showkut purported to execute the transfer of the Property to Ms Lallbeeharry or if the Applicant did not otherwise authorise Showkut to sign the transfer on his behalf. If the Applicant did not execute the power of attorney or otherwise authorise Showkut to sign the transfer then the transfer was a nullity. It was not a disposition required to be completed by registration and the registrar was mistaken in recording the purported effect of the transfer in the register – *Argyle Building Society v. Hammond* (1984) 49 P&CR 148.

33. I am satisfied that the Applicant did not execute the power of attorney for the following reasons.

- (1) It is his evidence that he did not.
- (2) There is no witness evidence that the Applicant did execute the power of attorney.
- (3) Showkut was not called to give evidence that the Applicant did execute the power of attorney.
- (4) No witness gave evidence of having witnessed the Applicant execute the power of attorney.
- (5) I cannot give weight to the contents of the emails from Cabeer Ahmed where they contain statements contradicting the oral evidence of the Applicant. No witness statement from Cabeer Ahmed was produced and he did not attend to give evidence on oath and to have that evidence tested by cross-examination. Counsel for the Bank in her written closing submissions placed much reliance on the content of these emails. If the Bank had wanted to

rely on statements from Cabeer Ahmed then it should have served a witness statement made by him and called him to give evidence. The Bank chose not to do so.

(6) It is improbable that the Applicant would have given a power of attorney to Showkut. The evidence is that Showkut could not read or write. He would therefore not be a suitable person to hold the power of attorney. The Applicant had already given a power of attorney to Joned. Joned was educated and a more suitable person to hold a power of attorney. Had the Applicant wanted to appoint an attorney to sell the Property for him, he could have appointed Joned. For him to have appointed Showkut makes no sense.

(7) There is no evidence that Showkut acted in any way in reliance on the power of attorney except in relation to the transfer to Ms Lallbeeharry. The 2008 power of attorney was expressed to give Showkut authority to “deal with all aspects” of the Property. That would have authorised him to let out rooms in the Property, to collect rents and to maintain the Property. The evidence is that it was Joned who did these things. It makes no sense for the Applicant to have given Showkut a power of attorney in 2008 that overlapped with the authority given to Joned, for Showkut to have waited over a year before doing anything in reliance on the power of attorney and for Joned to have continued to manage the Property in the meantime. It may be that the explanation is that the 2008 power of attorney was in fact made in 2009 but was backdated to 2008 to a date when it was known the Applicant had been in the country.

(8) Swaleb’s evidence that he was asked by Azad to tell a solicitor that he had witnessed Joned signing the 2008 power of attorney is evidence that supports the view formed on the basis of other evidence that the 2008 power of attorney was not signed by the Applicant. If it had been, Azad would not have needed to ask Swaleb to pretend to have witnessed it.

34. Counsel for the Bank submitted that if I were to find the power of attorney was not signed by the Applicant, I should nonetheless find that the Applicant authorised Showkut in some other way to execute the transfer. Counsel did not say in her submissions how this authority may have been given or communicated. Counsel submits that the Applicant “has failed to establish that Showkut was not authorised to sign the transfer on the Applicant’s behalf”. She relies on three factors

(1) that the evidence shows the Applicant had not treated the Property as his own; it had been mortgaged by Swaleb;

(2) that the Applicant had not benefitted from the Property financially and the transfer to Ms Lallbeeharry relieved him of liability on the mortgage; and

(3) that the Applicant did not behave after learning of the transfer to Ms Lallbeeharry in a way to be expected of a victim of fraud.

35. I do not accept that submission. The Applicant has established that the power of attorney was not signed by him. The plain likelihood is that it was signed by Showkut or by Showkut and a third party. It is very difficult to see how it can be said the Applicant had authorised Showkut to sign the transfer when Showkut had gone to the lengths of forging or being involved in the forging of the Applicant's signature on a power of attorney. That would not have been necessary had the Applicant been willing to give Showkut authority to sign the transfer. It does appear that the Applicant did not regard the Property as being his completely to do with as he wished but that does not mean he authorised Showkut to sign the transfer. There is simply no evidence that the Applicant gave authority to Showkut to sign the transfer. It is unlikely that he did so given that Showkut relied on the transfer on a forged power of attorney.

Should the register be rectified?

36. Ms Lallbeeharry was at the date of the application and is now in possession of the Property. Therefore, the application cannot succeed unless the provisions of paragraph 6(2) are satisfied. I have to consider whether Ms Lallbeeharry contributed to the mistake on the register through fraud or lack of proper care or whether it would be unjust for any other reason for the register not to be altered.

37. Counsel for the Applicant submitted that I should find Ms Lallbeeharry contributed to the mistake through fraud or lack of proper care. He submitted that (1) Ms Lallbeeharry knew the purchase was fraudulent or (2) caused the mistake on the register by fraudulently obtaining the mortgage advance or (3) showed a lack of proper care in relation to the purchase by leaving everything to Azad to arrange.

38. Where an allegation is made of fraud in civil proceedings, the standard of proof is the normal standard of proof on the balance of probabilities. However, I should keep in mind that there is an inherent improbability about people behaving in a fraudulent manner. The more serious the allegation, the less likely it is that the event occurred and hence the stronger the evidence that is needed before it can be concluded that the allegation has been established on the balance of probabilities.

39. Ms Lallbeeharry would have known that the purchase was fraudulent if she knew that the power of attorney was a forgery in that it had not been signed by the Applicant. I therefore have to decide on the balance of probabilities whether Ms Lallbeeharry knew that the Applicant's signature on the power of attorney was a forgery. I have concluded that it was not more likely than not that Ms Lallbeeharry knew that the Applicant had not signed the power of attorney and that his signature on it was a forgery for the following reasons.

(i) There is no direct evidence that Ms Lallbeeharry knew the power of attorney had not been signed by the Applicant. It was not put directly to Ms Lallbeeharry in cross-examination that she knew the power of attorney had not been signed by the Applicant. Ms Lallbeeharry knew that the Property belonged to the Applicant. She knew that Showkut was an uncle of the Applicant. She knew that there was a power of attorney. She said that Azad showed it to her to show her that Showkut was allowed to sell the Property. This element of her evidence is not implausible.

(ii) Ms Lallbeeharry's evidence was in substance that she left the negotiating of the details of the transaction to Azad. She did not herself talk to Showkut. She said that the sale was something negotiated between the family members. I accept that evidence. It is entirely likely that the whole arrangement was one discussed and agreed between Showkut and Azad.

(iii) The alteration in the stated sale price from £250,000 to £142,500 is something that if it had occurred in an arms length transaction between a vendor and purchaser who were not related should have raised concerns in the mind of a person in the position of Ms Lallbeeharry. However, this was not an arms-length transaction and Ms Lallbeeharry believed it to be a transaction between family members. Ms Lallbeeharry's evidence was that she believed that in addition to the sum of £142,500, title to a property in Mauritius was handed over as part of the consideration for the sale. I do not consider that the alteration in the price is something that shows Ms Lallbeeharry knew the sale to be one that was made without the knowledge or consent of the Applicant.

(iv) The Applicant himself accepted in cross-examination that it could be that Ms Lallbeeharry did not know the power of attorney was fraudulent.

40. The second way in which counsel for the Applicant put his case was that Ms Lallbeeharry caused the mistake on the register by fraud in that she obtained the mortgage advance by fraud and without the mortgage advance, the transfer would not have been made; there would have been no transfer to have been registered and so the mistake on the register would not have occurred.

41. I am satisfied that Ms Lallbeeharry did lie in the application for a mortgage. Her evidence is that she went to the mortgage brokers with Azad and that Azad helped her to fill out the mortgage application forms. She filled out the forms with Azad's help and then she signed the mortgage application form. The form stated Mrs Lallbeeharry's income to be £39,000 per annum. Mrs Lallbeeharry accepted that her income was not £39,000 but was in fact much less. The form can only have stated that Ms Lallbeeharry's income was £39,000 if she gave that figure to be written into the application form or if Azad told her to state that figure. By signing a form stating that her income was £39,000, Ms Lallbeeharry was lying to the Bank.

42. Mrs Lallbeeharry's evidence was that her income was £5,000 per annum, not £39,000. It is proper to conclude that had Mrs Lallbeeharry given her real income then she would not have been offered a mortgage advance of £142,500. Had she not been offered the mortgage, the particular sale to her for £142,500 would not have gone ahead. However, that is not to say that the transfer would not have been made at all.

43. There is a mistake on the register because a void transfer to Ms Lallbeeharry was registered. The transfer was void because it was not executed by the registered proprietor or by someone having lawful authority to execute the transfer on behalf of the registered proprietor. The misrepresentations Ms Lallbeeharry made to the bank in order to obtain a mortgage advance were not what brought about that mistake.

44. Counsel for the Applicant further submitted that Ms Lallbeeharry caused or contributed to the mistake on the register through lack of proper care. He submitted that Ms Lallbeeharry showed a want of proper care by leaving the negotiations of the details of the transaction to Azad, that she should have spoken herself to Showkut and to the Applicant. I do not agree. Ms Lallbeeharry was entitled to rely on her husband to carry out the negotiations. She had solicitors who acted for her in the conveyancing. The power of attorney was produced to them by solicitors instructed by Showkut. I do not consider that Ms Lallbeeharry was under a duty to take steps to check that the power of attorney was genuine.

45. There is no other reason why it would be unjust not to alter the register.

Conclusions

42. There is a mistake on the register. The transfer to Ms Lallbeeharry was void because Showkut did not have authority to execute it. The power of attorney under which he purported to act was not executed by the Applicant.

43. Ms Lallbeeharry is the registered proprietor in possession of the Property. The Applicant has not satisfied me on the balance of probabilities that Ms Lallbeeharry caused or contributed to the mistake on the register by fraud or want of proper care.

44. The test for rectification of the register to correct the mistaken registration of the transfer not having been met, there are no grounds to order the removal of the charge in favour of the Bank.

45. I shall direct the Chief Land Registrar to cancel the application of the Applicants to alter the register.

Costs

46. My preliminary view is that the Applicant should pay part only of the Respondents' costs of the proceedings. The Respondents did not accept that the Applicant did not sign the power of attorney. Had they done so, the costs of the proceedings would have been substantially less. My preliminary view is that the Applicant should pay 60 per cent of the Respondents' costs to reflect this factor. Any party who wishes to submit that some different order should be made as to costs, should file written submissions with the Tribunal by 5pm on 4th January 2018 and serve them on the other party by the same date.

BY ORDER OF THE TRIBUNAL

Michael Mitchell

Dated this 5th December 2017