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14, 1957

No. 22 of 1956.

In the Privy Council.

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL.

BETWEEN

CHINTAMANIE AJIT (Plaintiff) Appellant

AND

THE DEMERARA STORAGE CO. LIMITED
(Defendants) Respondents.

UNIVERSITY OF LONDON

25 FEB 1958

INSTITUTE OF ADVANCED
LEGAL STUDIES

49861

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Case for the Respondents.

RECORD.

1. This is an appeal from a Judgment of the West Indian Court of Appeal dated the 11th January, 1956, and entered the 13th March, 1956, affirming a Judgment of the Supreme Court of British Guiana (Civil Jurisdiction) dated the 24th September, 1954, and entered the 21st October, 1954, whereby the claim of the Appellant was dismissed with costs to be paid by the Appellant (the Plaintiff in the action). As the sum claimed by the Appellant was more than £300 the Appellant was entitled as of right to appeal to Her Majesty in Council subject to the fulfilment of conditions as to giving security for costs and as to settlement and preparation of the Record, and, such conditions having been fulfilled, this appeal to Her Majesty's Privy Council was finally admitted by the Order of the Chief Justice of British Guiana made the 12th April, 1956, and entered the 25th April, 1956.

p. 27, l. 30.
p. 20, l. 11.

p. 31.

2. By his Statement of Claim the Appellant, who is a licensed property agent in British Guiana, claimed that during the year 1951 the Respondents acting by their Managing Director, John De Freitas entered into an oral agreement with the Appellant, whereby they appointed the Appellant as agent to sell certain property on their behalf at a commission of 3 per cent. of whatever sale price might be accepted by the Respondents. The Appellant further alleged that the Respondents in November, 1953, had sold the said property to Sankar Brothers Limited for the sum of 200,000 dollars (which was not disputed by the Respondents) and that the said sale was effected as a result of his negotiation between the years 1951 and 1953, and accordingly he claimed commission of

p. 7, ll. 6-23.

p. 7, ll. 35-50.

p. 8, ll. 10-21.
pp. 10-11.

6,000 dollars together with ancillary relief. By their Affidavit of Defence the said John De Freitas and Anthony Marques Stanislaus Barcellos, the Secretary of the Respondents (*inter alia*) denied the existence of the alleged agreement or that the Appellant had been employed by the Respondents or had negotiated on their behalf in connection with the said sale.

pp. 12-13.

p. 14.

p. 13, l. 55.

p. 13, l. 31.

Ex. 1, p. 20.

3. At the trial of the action the Appellant (who appeared in person both before the Supreme Court and before the Court of Appeal) gave evidence of conversations with the said John De Freitas and with Amin Sankar and Ahmad Sankar, the governing and managing directors of Sankar Brothers, relating to the alleged agreement and his alleged negotiations on behalf of the Respondents. Two witnesses, Isaac Chin and Andrew James, testified that the Appellant had taken them sometime in 1953 to see the said De Freitas and the said property with a view to their making an offer for them. This was not disputed by the Respondents, who on the 26th July, 1953, had advertised the property for sale in a local newspaper. A further witness, Rustum Insanally, a land surveyor, said that sometime in 1953 the Appellant had taken him to see the said De Freitas with a view to his being employed to survey the said property, but that the said De Freitas had told the Appellant that he must sell the place first. Again, it was not disputed by the Respondents that local land agents had concerned themselves in finding a purchaser of the said property in the hope of obtaining a commission and that albeit without legal obligation they would have paid a commission (as in fact they did) to the agent who obtained a purchaser. Indeed, another witness called by the Appellant, Victor McLean, swore that De Freitas had appointed him as the agent for the sale of the said property. But not a single witness called on behalf of the Appellant corroborated the existence of the alleged agency agreement or the employment of the Appellant as the Respondents' agent, nor was any document tending to this effect produced as an exhibit, other than a letter from the Appellant himself written on the 17th February, 1954, which was approximately three months after the Respondents had agreed to sell the property to Sankar Brothers Limited and four days after the sale had been advertised by the Registrar of Deeds in the Official Gazette of British Guiana.

p. 14, l. 47.

p. 15, l. 10.

p. 15, l. 16.

4. The Appellant called one Charles Austin to corroborate a conversation which he (the Appellant) was alleged to have had with the said De Freitas. But this witness stated in cross-examination that the Appellant had offered him 200 dollars if he came to Court and said that he (the witness) had heard Mr. De Freitas offer the place to the Appellant to sell and that the Appellant was offering him (the witness) 200 dollars to speak what was false.

pp. 16-17.

p. 16, ll. 10-15.

5. On behalf of the Respondents their Managing Director, the said John De Freitas, testified that he had never employed the Appellant to sell the property in question or arranged to pay him 3 per cent. He stated that after he had placed the advertisement (referred to above) in the Chronicle of the 26th July, 1953, the Appellant had brought the said James and Chin to see him and that they had inspected the property together, but that no offer had been made. He said that he (the witness)

was willing to sell to the first person who paid the price and that he would have paid the Appellant a commission if he (the Appellant) had effected the sale. As to the agreement to sell to Sankar Brothers Limited in November, 1953, he stated that this had been arranged through the mediation of another agent, one Charles, on behalf of a then undisclosed principal and that he himself had never spoken to either of the Sankar brothers about the sale of the property. He produced a copy of his advertisement, two option agreements in favour of Sankar Brothers Limited and the letter by which the option was exercised on their behalf by the said Charles. He had paid the said Charles 3 per cent. commission on the sale. Amin Sankar, the Governing Director of Sankar Brothers Limited, also testified that he had had no transaction with the Appellant about buying the property in question, that he never told the Appellant to go and see his (the witness') brother, that he had no discussion with his brother about the matter and did not authorise his brother to buy, but that he had bought the property through the said Charles who had offered it to him.

p. 16, l. 34.
p. 17, l. 31.
p. 16, ll. 20-30.
Ex. 3, p. 21.
Exs. 4-6, pp. 21-24.
p. 17, l. 32.
p. 17, ll. 45-52.

6. The hearing of the evidence lasted into two days, at the conclusion of which Counsel for the Respondents did not address the Court, and, after the Appellant had addressed the Court, the learned Trial Judge, Mr. Justice R. R. Phillips, gave Judgment for the Respondents with costs. His Reasons for Decision contained the following passage :—

p. 19, l. 51.

“ The Plaintiff's (Appellant's) evidence of this alleged contract was unsupported and the witnesses he called carried his case no further. I accepted the evidence given by Mr. De Freitas and Mr. Sankar, and consequently gave Judgment for the Defendants (Respondents).”

7. At the hearing of the appeal before the West Indian Court of Appeal (Chief Justice J. M. Perez, Trinidad and Tobago, Chief Justice Donald E. Jackson, Windward Islands and Leeward Islands, and Chief Justice F. W. Holder, British Guiana) Counsel for the Respondents were not called upon and the Note of Judgment contains the following passage :—

p. 27, l. 16.

“ The Judge after hearing all the evidence came to a conclusion adverse to the Appellant. We are satisfied that there was abundant evidence to justify that finding and indeed it would have been strange if, in view of the facts given in evidence, he came to any other conclusion.”

8. The Respondents humbly submit that the Appeal of the Appellant should be dismissed and that the Appellant should be ordered to pay the costs thereof and that the Judgments of the Supreme Court of British Guiana and the West Indian Court of Appeal should be affirmed for the following among other

REASONS.

(A) BECAUSE the Trial Judge having seen and heard all the witnesses accepted the evidence adduced on behalf of the Respondents.

- (B) BECAUSE the Appellant failed to prove that the Respondents ever agreed to employ him or in fact employed him as an agent for the sale of the property in question.
- (C) BECAUSE the existence of any such agreement or employment is a question of fact upon which there are concurrent findings in favour of the Respondents.
- (D) BECAUSE the Judgments of the Trial Judge and of the West Indian Court of Appeal respectively are correct for the reasons therein stated. 10

JOSEPH DEAN.

In the Privy Council.

ON APPEAL

from the West Indian Court of Appeal.

BETWEEN

CHINTAMANIE AJIT

(Plaintiff) *Appellant*

AND

THE DEMERARA STORAGE

CO. LIMITED (Defendants) *Respondents*

Case for the Respondents.

SIMMONS & SIMMONS,

1 Threadneedle Street,

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Solicitors for the Respondents.