

1/1962

No. 60 of 1960.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
ON APPEAL FROM THE SUPREME COURT  
OF THE FEDERATION OF MALAYA  
THE COURT OF APPEAL AT KUALA LUMPUR

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
29 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1

68186

B E T W E E N :-

A.R.P.L. PALANIAPPA CHETTIAR

Appellant  
(Defendant-  
Appellant)

- and -

P.L.A.R. ARUNASALAM CHETTIAR

Respondent  
(Plaintiff-  
Respondent)

CASE FOR THE APPELLANT

1. This is an appeal from the Judgment and Order of the Court of Appeal of the Federation of Malaya dated 23rd April 1959 (Thomson C.J., Rigby and Ong J.J.) dismissing the Appeal of the Appellant from the Judgment and Order of the High Court of the Federation of Malaya dated 1st July 1958 (Smith J.) upholding the claim of the Respondent for a declaration that the Appellant held certain rubber land in trust for the Respondent and for an order that the Appellant execute a valid and registrable transfer of the said land to the Respondent. The Appellant and the Respondent are respectively son and father. pp.26-38.  
pp.12-16.
2. By his Statement of Plaint dated 21st November, 1950, the Respondent pleaded (inter alia) that on 27th February 1935 without receiving any consideration he transferred a piece of land of which he was the registered owner to pp.1 - 2.

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his son the Appellant on trust that the Appellant should hold the same in trust for the Respondent; that in view of their relationship no trust deed was executed; that the land had continuously been in his possession since the said transfer; that he had been enjoying the income from the said land and paying all quit rents; that by letter dated 14th October 1950 the Appellant refused to comply with the Respondent's request to execute an immediate transfer of the said land in favour of the Respondent.

pp. 2 - 3. 3. At the conclusion of his Statement of Pleint the Plaintiff asked (inter alia) for the following relief:-

" (a) For a declaration that Defendant is a Trustee of the said land holding the same in trust for the Plaintiff.

(b) That Defendant be ordered to execute a valid and registrable transfer of the said land in favour of the Plaintiff on a day to be named by this Honourable Court.

(c) In the alternative should Defendant fail to transfer the said land to the Plaintiff on or before the day mentioned above the Registrar of this Court be ordered to execute the necessary transfer."

pp. 5 - 6. 4. By his Statement of Defence dated 3rd April, 1951, the Appellant admitted that the land described in the Pleint had been registered in the name of the Respondent but contended that it was held by him on trust for a Hindu Joint Family in which both parties and one Lakshmanan Chettiar were co-parceners; that the

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Respondent did not transfer the said land on 27th February 1935 to the Appellant on trust but that he (the Appellant) purchased it from the Respondent for the sum of \$7000; that the Respondent did not enjoy the income from the said land but was entrusted with its management and liable to account for the income to the Appellant.

5. By way of counterclaim the Appellant sought (inter alia) an Order of the Court in the following terms :- p.6.

" (1) an Order that the Plaintiff render an account of the profits from the land from 27th day of February 1935 and that the Plaintiff pay to the Defendant any sum found due on taking such account."

6. By his Reply and Defence to Counterclaim dated 30th April, 1951, the Respondent joined issue with the Appellant on his Defence and made a general denial of the Counterclaim. p.7.

7. The action was tried by Smith, J. on 30th June, 1958. At the commencement of the hearing the Appellant's solicitor applied for an adjournment because of the illness of the Appellant's senior counsel who had been retained in the case on behalf of the Appellant since 1953. The application was refused. The Appellant's solicitor then withdrew from the case. The Appellant in person then repeated the application for an adjournment on the ground of his counsel's illness. This application was also refused. The Appellant then stated he did not wish to appear. The trial judge warned him of the possible result and adjourned the Court for 15 minutes. When the Court resumed the Appellant applied again for an adjournment, which was again refused. The Appellant p.8, l.6. p.8, l.18. p.8, l.27.

then left the Court and took no further part in the trial. On the 1st July 1958 before delivering judgment p.12, l.14. the trial Judge delivered his reasons for refusing an adjournment. He gave two main reasons, namely, that the p.12, l.42. Appellant's solicitor had indicated only one week before the trial that he desired an adjournment and that the Appellant or his solicitor must have known for at least p.13, l.5. a month that their counsel might not be able to appear. He gave as an additional reason the fact that the Appellant had been able to draw on other advice. The p.13, ll.14-20. trial judge then stated his reasons for refusing the application for an adjournment made by the Appellant personally, namely, that he did not know the reasons of the Appellant's Solicitor for withdrawing from the case, but that he did not consider that the Appellant was in the position of a person who had suddenly through no fault of his own been deprived of the services of his legal adviser.

p.8, l.31. 8. In opening the case counsel for the Respondent submitted that the Appellant held the land on trust in that the transfer in 1935, having been made for no consideration, gave rise to a resulting trust.

p.9, ll.17-25. The Respondent testified that he had transferred the land to his son so as to reduce his holding of rubber to less than 100 acres; that his son did not pay \$7000 but paid nothing; that he had received all the income p.10, l.11. and paid all wages and assessments; that he had no trust deed because it was his own son; that his son was 22 years old and fully aware of the reason; that his son knew he held in trust. He produced a copy of the Ex.P.4, p40, l30. transfer to his son.

p.10, l.16. In answer to the Court the witness stated that he was under the impression that he had to put some amount in the transfer and that the amount was merely

mentioned for the sake of registration; that his account showed that his son was trustee and that had he (the witness) received the ₹7000 it would appear in the accounts; that he had no intention of making a present to his son, his sole object being to avoid having to disclose that he held more than 100 acres of rubber land.

M. S. Perumal, the Respondent's agent, testified that if the Respondent's firm had over 100 acres he had to go to the Controller instead of the Land Office to get coupon for rubber production and that it was easier to deal with the Land Office; that he informed the Respondent and the Respondent told him to prepare a memorandum of transfer mentioning ₹7000; that he did not know if the ₹7000 was paid but was under the impression that the land still belonged to the Defendant and he dealt with it on that basis. p.10, l.37. p.11, l.2.

9. In his Judgment the trial judge summarised the evidence for the Respondent and concluded as follows :- p.13, l.32.

"The Defendant's defence was, in effect, that the land was part of the property of a Hindu Joint Family and was held by the Plaintiff on trust for the Joint Family in which the Plaintiff, the Defendant and one Lakshmanan Chettiar were co-parceners. The Defendant in his defence alleged that the Plaintiff had transferred this joint property to him for the sum of ₹7,000. The Plaintiff's case had the ring of truth and in the absence of any evidence from the Defendant I regard it as probable. If the story of the Plaintiff is true it is quite clear that the Plaintiff has practised a deceit on the public administration of the country in order to get a benefit for himself. In view, however, of the Court of Appeal decision in Sardara Ali v Sarjan Singh, (1957) 23 M.L.J., page 165, it appears that the Plaintiff's possible turpitude is no reason for denying to him the orders which he seeks. p.14, l.37.

I considered also whether the Plaintiff was estopped by the terms of the receipt in the transfer in favour of the Defendant dated 23rd February, 1935 from denying that he had received ₹7,000 consideration from p.15, l.8.

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the Defendant for the land. In the absence of evidence from the Defendant the explanation given by the Plaintiff appears to me to be probable and to fall within proviso (f) to Section 92 of the Evidence Ordinance, 1950. I therefore make orders in the terms prayed by the Plaintiff, direct that the Defendant do execute a valid and registrable transfer of the said land in favour of the Plaintiff on or before the 29th day of July, 1958, and award to the Plaintiff his taxed costs."

10. On 15th September, 1958, the Appellant filed a Memorandum of Appeal in the Supreme Court of the Federation of Malaya in the Court of Appeal at Kuala Lumpur containing the following grounds :-

p.17. 1.26.

- " (1) The learned Trial Judge was wrong in refusing the Defendant's application for an adjournment of the hearing of the suit and in doing so he has failed to exercise his discretion in a judicial and reasonable manner.
- (2) The learned Trial Judge failed to appreciate that the granting of an adjournment of the hearing would not in any way prejudice the Plaintiff's case.
- (3) The learned Trial Judge was wrong in holding that the Appellant was not in a position of a person who had suddenly through no fault of his own been deprived of the services of his legal adviser.
- (4) The learned Trial Judge erred in law in failing to consider that as the Defendant was the registered proprietor of the land in question, his title was indefeasible.
- (5) The learned Trial Judge was wrong in holding that the Plaintiff's evidence was supported by the evidence of his agent.
- (6) The learned Trial Judge erred in law in holding that the principles laid down in the case of Sardara Ali v Sarjan Singh (1957) 23 M.L.J. page 165 are applicable to this case."

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11. The hearing of the Appeal commenced on 13th October 1958 and continued the following day when the Appellant obtained an adjournment until 24th November 1958 for the purpose of filing and subsequently arguing additional grounds of Appeal. p.18, 1.30.

12. On 11th November 1958, the following additional grounds of appeal were filed :-

- " 1. The learned Judge was wrong in law in admitting oral evidence by the Plaintiff of his intention in making the transfer thereby contradicting the plain meaning of the terms of the contract as reduced to writing in the Memorandum of Transfer. p.21, 1.18.
2. The learned Judge was in any event wrong in regarding proviso (f) to Sec. 92 of the Evidence Ordinance as enabling him to admit that evidence.
3. The learned Judge failed to have regard to the provisions of the Land Code as to registered ownership of land and the permitted methods of indicating a Trust and in effect by his Judgment in favour of the Plaintiff destroyed the protection given to registered proprietors under Sec. 42 of the Land Code.
4. The learned Judge further failed to have regard to the provisions of the Land Code relating to protective entries on the Register in support of a claim to beneficial ownership of property, and was wrong in law in making the declaration in favour of the Plaintiff who had done nothing to protect his interest and, against the Defendant in whom as registered proprietor both the legal and equitable or beneficial ownership of the land vested.
5. The learned Judge was wrong in accepting the argument addressed to him as to there having been a resulting trust in favour of the Plaintiff.
6. The learned Judge failed to have regard to the fact that the Defendant was the son of the Plaintiff and as such no presumption as

to a Resulting Trust arose or alternatively if it did it was neutralised by the presumption of advancement which on the identical evidence arose in favour of the Defendant.

7. In any event the learned Judge was wrong in accepting the reason given by the Plaintiff for the transfer in favour of the Defendant because had he referred to the Rubber Regulation Enactment of 1934, he would have been satisfied that the reason given could not be true.
8. Further the learned Judge failed to have regard to the fact that the attorney who gave evidence, and at whose suggestion the transfer is alleged to have been made gave an entirely different reason for his suggestion, and that therefore the reason given by the Plaintiff was in fact untrue.
9. In the further alternative the learned Judge should have held that even if true it was evidence of an unlawful purpose and the Plaintiff could not obtain the reliefs he had asked for by setting up his own illegality.
10. The learned Judge was wrong in his application of the principle of the decision in Sardan Ali v Sarjan Singh (1957 MLJ 165) which was in fact against the Plaintiff's claim for relief.
11. On the whole case the learned Judge ought to have held -
  - (i) that the object of the transaction as stated by the Plaintiff was an unlawful object and therefore could not in law support the Plaintiff's claim;
  - (ii) that alternatively either as an explanation or as an excuse for the transaction it was palpably untrue;
  - (iii) that in any event such oral evidence was not admissible to vary the terms of the written contract; and
  - (iv) that the allegation of the transfer being a voluntarily transaction even if accepted, at



the very highest only enabled the Plaintiff to seek to obtain from the Defendant payment of the consideration and was not sufficient to obtain a re-transfer of the property having regard to the provisions of the Land Code."

13. Further argument was heard on 24th November 1958 p.23, l.29.  
and was concluded on the following day. The judgment of the Court was delivered on 23rd April 1959. The principal judgment, with which Rigby J. and Ong J. agreed, was delivered by Thomson C.J.

14. On the refusal by the trial judge to grant the Appellant an adjournment the learned Chief Justice held that the Appellant had not suffered any injustice because "in effect (he) deliberately took up the attitude that if he could not be represented by one particular Counsel then he would take no part in the proceedings" p.29, l.40.  
and that therefore it would be wrong to interfere with the discretion vested in the trial judge. It is submitted that this ruling assumes that the Appellant had instructed his solicitor not to brief other Counsel and to withdraw from the case when the application for an adjournment was refused.

15. The learned Chief Justice further held that the evidence that the \$7000 stated in the transfer to have p.32, l.4.  
been paid was not in fact paid was admissible in law p.32, ll.27-33.  
and that the value of such evidence was not to make out a fact from which a resulting trust could be presumed but to add probability to the statement that there was in fact an equitable obligation to hold the land in trust.

He said -

"(The Respondent's) case was that there had been a p.31, l.42.  
transfer to the Appellant of the whole right title and interest in the land and that the Appellant accepted the transfer subject to the personal obligation that he

should hold it in trust for the Respondent.

x x x x x x x x

p.33, l.10. It is a case of an express trust arising on the Respondent having in terms accepted the transfer on the express understanding that he held the land in trust."

It is submitted that the evidence in question was inadmissible either in law or because the transfer created an estoppel and that there was no sufficient evidence either to establish an express declaration of trust or to rebut the presumption of advancement.

16. Finally the learned Chief Justice rejected the argument put forward on behalf of the Appellant that if there was an express declaration of trust such trust was created for an unlawful purpose and could not therefore be relied upon or enforced by the Respondent.

He said -

p.35, l.19. "Now, whatever may have been his purpose there is no evidence that the Plaintiff did in fact practice any deceit on the public administration of the country. He may have intended to do so but there is nothing to show that in fact he did do so. Moreover, the bare representation that the two pieces of land were registered in the names of different proprietors even if it were made to anybody (and I repeat there is no evidence of this) would not in itself have been sufficient to have the two pieces of land treated as separate holdings for the purpose of the Enactment, for it is clear from the definitions of "holding" and "owner" in Section 2 that what mattered was not who was the registered proprietor of land but who was in charge of it and in the present case the person in charge of both holdings at all material times was the agent, Perumal.

In any event the Appellant was a party to the present transaction, as he had to be by reason of the provisions of the Land Code, and the question of illegality was never raised by him at any stage."

It is submitted that this ruling does not accord with the evidence given by the Respondent that  
p.9, l.17. the purpose of the transaction was to reduce his apparent holding to less than 100 acres but that he had

in fact at all times received all the income from and paid all assessments in respect of 139 acres. Nor does it take account of the fact that the question of illegality was raised by the trial judge and argued before the Court of Appeal. It is submitted that in the circumstances the Court was bound to take cognizance of it. p.9, l.24.

17. On 2nd November 1959 the Supreme Court of the Federation of Malaya in the Court of Appeal at Kuala Lumpur granted final leave to the Appellant to Appeal to His Majesty The Yang di-Pertuan Agong. p.38.

18. The Appellant humbly submits that the Judgment and Order of the Supreme Court of the Federation of Malaya in the Court of Appeal both dated 23rd April 1959 together with the Judgment and Order of the High Court both dated 1st July 1958, should be set aside and that the claim of the Respondent should be dismissed with costs throughout or alternatively that the case should be remitted to the High Court for a new trial for the following among other

### R E A S O N S

1. BECAUSE the trial judge wrongly exercised his discretion in refusing an adjournment of the hearing and the Appellant thereby suffered an injustice.

2. BECAUSE the evidence that no consideration was paid was inadmissible either to vary the terms of the transfer deed or because the transfer deed created an estoppel in favour of the Appellant.

3. BECAUSE in any event there was no sufficient evidence of an express declaration of trust at the time of

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execution of the said transfer deed so as to rebut the presumption of advancement by the Respondent father to the Appellant son.

4. BECAUSE if there was an express declaration of trust it was made for an illegal purpose and cannot be relied upon or enforced by the Respondent.

Joseph Dean

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A.R.P.L. PALANIAPPA CHETTIAR

- v -

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C A S E  
for the  
A P P E L L A N T

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Graham Page & Co.,  
41, Whitehall,  
London, S.W.1.  
Appellant's Solicitors.