

A

KAPUR SINGH

v.

B

SUBRAN SINGH

[SUPREME COURT, Lautoka (Williams, J.) 11 April 1979]

Civil Jurisdiction

C *Agricultural Tribunal extended tenancy of parcels let together—Application under Land Transfer Act 1971 to recover possession of one—resjudicata—action dismissed—same result from consideration and legislation*

S. M. Koya for Plaintiff

R. D. Patel for Defendant

D Facts set in the Court's judgment include that plaintiff brought this action claiming possession of land comprised in Lease 61206 which included Lots 10 and 13 of 2 roods 39 perches and 5 acres 1 rood 10 perches respectfully totalling 6 acres 9 perches.

E The defendant as tenant occupied the land, having acquired it from owner for 21 years from 31 December 1952.

On 17 March 1964 the owner sold her interest in the land to the plaintiff who thus became defendant's landlord.

F On 18 November 1976 the Agricultural Tribunal (Tribunal) extended the defendant's tenancy (including both lots) for 10 years. The order for extension was upheld by the Central Agricultural Tribunal. It found Lot 10 and 13, under one lease formed an "agricultural holding".

G Before judgment was given by the Tribunal the plaintiff filed this claim under the Land Transfer Act 1971 s.169 for possession on the ground that Lease 61206 was terminated on 31 December 1972. In an Amended Statement of Claim the plaintiff sought to recover only Lot 10. For this claim to succeed it was necessary to show that Lot 10 could be severed from the whole parcel. Plaintiff claimed Lot 10 was not agricultural and because less than 2½ acres it was not protected by the legislation.

H The defendant having regard to the decision of the Agricultural Tribunal sought to raise a defence of estoppel. He was given leave to file an Amended Statement of Defence.

Held: The decision of the Agricultural Tribunal was the decision of a lawfully appointed Tribunal arrived at in proceedings properly instituted before it. Until that decision was set aside it was binding upon the parties and presumed to be lawful and enforceable. The Lots 10 and 13 formed one agricultural holding. A 'parcel' can include 'parcels'.

A

Since the plaintiff's action was filed about 3 years after the tenant's application to the Tribunal, and raised an issue currently being considered by the Tribunal, the filing of the action at that stage was an abuse of process of the court.

B

Plea of res judicata properly raised. Application dismissed with costs. The same conclusion followed from a consideration of the Interpretation Ordinance, and Agricultural Landlord and Tenant Ordinance (Cap. 242).

WILLIAMS J.:

C

Judgment

The defendant as tenant occupies land covered by lease No. 61206 which comprises two separate lots Nos. 10 and 13 which were created when a large holding was subdivided into smaller lots.

D

Lot 10 is 2 roods 39 perches and lot 13 is 5 acres 1 rood 10 perches. The total area covered by the lease is therefore 6 acres and 9 perches.

He acquired his lease 61206 from the owner Mrs Watson for 21 years from 31/12/52.

On 17.3.64 Mrs Watson sold her interest in the land to the plaintiff who thus became the defendant's landlord under the lease 61206.

E

The Agricultural Tribunal on 18/11/76 extended the defendant's tenancy which includes lots 10 and 13 for 10 years in application N. D. 12/1973 and the order for extension was upheld on 4.5.77 by the Central Agricultural Tribunal in App. 6/76.

Shortly before the Agricultural Tribunal delivered its judgment of 18/11/76, the plaintiff filed this action in the Supreme Court on 3.8.76 claiming possession on the ground that the lease 61206 was terminated on 31/12/73. The action was brought under the Land Transfer Act 1971, S.169.

F

A Statement of Claim was filed on 27.10.76 and an amended Statement of Claim was filed on 28.8.78 which only seeks to recover lot 10, which measures 2 roods 39 perches. Para 22 thereof alleges that since the A.L.T.O., Cap. 242, only applies to areas of less than 2½ acres and that in any event since lot 10 is not agricultural land within the meaning of A.L.T.O. it is not protected by the Ordinance.

G

For those allegations to be maintained it has to be shown that lot 10 can be uplifted or severed from the lease No. 61206. In other words that although A.L.T.O. applies to lot 13 it does not apply to lot 10 and that a renewal of lease 61206 cannot extend to lot 10.

H

A At the hearing Mr R. D. Patel for the Defendant raised the issue of 'res judicata' based on the decisions of the Agricultural Tribunal as upheld by the Central Tribunal but he had not pleaded these matters. He was, by consent, given leave to file an amended defence raising estoppel and the plaintiff replied thereto.

Mr Koya for the plaintiff is support of his contention that the plots 10 & 13 are severable referre 1 to the definition of "agricultural" holding in S.2 of A.L.T.O. which describes it as—

B "a parcel of agricultural land to which the provisions of this ordinance apply"

and agricultural land is defined as land, "together with buildings thereon", used predominantly for growing crops and listing other agricultural uses.

C S.3(1) of the Ordinance says it applies to all agricultural land but does not apply to agricultural holdings of less than 2½ acres.

Mr Koya's contention appears to be that although a lease can consist of any number of "parcels" any parcel which is less than 2½ acres must be lifted out of the lease when the tenant applies to the Agricultural Tribunal for an extension. That argument is based on an acceptance that the expression "agricultural holding" is synonymous with the expression "parcel".

D Those arguments were raised by the landlord before the Agricultural Tribunal in proceedings No. W.D.12/73. On 18/11/76 the Tribunal gave its decision and took the view that the two portions of land lots 10 & 13 were let under one lease and therefore formed one "agricultural holding". The tenant's term was extended in respect of the entire lease i.e. both lots.

E When the landlord appealed the Central Tribunal came to the same decision as the Tribunal in regard to lot 10 holding that it mattered not whether the lots were separate or adjacent and stating that the two lots should be treated as one unit because they were held under one lease.

It is precisely this issue which is again raised in the present action. It has been determined by the Agricultural Tribunal, and Mr R. D. Patel, for the tenant, claims that the issue cannot be raised again because it has been judicially decided.

F Mr Koya argues that the issue is not the same; that in the proceedings before the Tribunal the tenant was claiming under A.L.T.O., a renewal so his lease, which includes lot 10, but in this action the landlord is seeking the tenant's eviction from lot 10 under a different ordinance namely, the L.T.A. 1971. It matters not, in my view, that the proceedings before the different tribunals arose under different Ordinances, because as I see it, the object is the same. The tenant wanted a renewal of his lease which includes lot 10. Had this been refused by the Agricultural Tribunal, or if the lease had been renewed but lot 10 had been excluded, the present action would have been superfluous because the tenant would not have been entitled to remain in occupation of lot 10. I can only evict the tenant from lot 10 in these proceedings if he shows no right to be in possession. But the Agricultural Tribunal has continued his right to possession by renewing his lease for 10 years. The present action asks me, in effect, to declare that the Tribunal erred in re-newing the tenants lease, in so far as it relates to lot 10, by asking the Supreme Court to order the tenant to give up possession.

Mr Koya argued that it was upon the tenant, who relies upon “res judicata” to show that the decision to renew the tenant’s lease ‘in toto’ was made by a tribunal which had jurisdiction. It has not been suggested that it was argued before the Tribunal that the Tribunal did not have jurisdiction or that this point was taken in the course of the landlord’s appeal before the Central Tribunal. Neither of those Tribunals was asked to state a case for the opinion of the Supreme Court or the Fiji Court of Appeal. If the Tribunals did not have jurisdiction then this not the kind of proceeding in which I can declare that there was an absence of jurisdiction. Both Tribunals purported to act within their powers and the parties submitted to their authority and jurisdiction.

I was referred to a number of decisions by Mr Koya to show that there was an absence of jurisdiction in the Tribunal. Those were decisions which had arisen on cases stated or in the course of certiorari proceedings the purpose of which was to review the judicial powers of the lower-tribunals. Consequently those decisions could have no application to the instant proceedings. He submitted that the decision of the Agricultural Tribunal was a nullity and that it did not exist. I would say with respect that the decision was arrived at following argument on both sides from counsel. In fact Mr Koya complained that the arguments of counsel as to whether lot 10 could be lifted out of the lease and be ignored in an application to re-new the lease of both lots had been dealt with extremely briefly and casually by the Agricultural Tribunal. In the circumstances one can scarcely say that it was a nullity or that it did not exist.

In my opinion it is the decision of a lawfully appointed Tribunal arrived at in the course of proceedings which were properly instituted before it. Until that decision is set aside it is binding upon the parties and presumed to be lawful and enforceable. There is no Court of law which has power to ignore it but that is not the same as saying the decision cannot be set aside by a supervising court, if there are grounds for so doing, provided the proper procedure is adopted.

The plea of res judicata was properly, if some what tardily, raised.

Should I be in error in so deciding I will deal with the pleadings as if the estoppel had not been argued.

Vol. IV *Stround*, p. 1923(6) indicates that a “parcel” of land is a piece of land which is described in a conveyance and at (7) it states that “parcella terrae” is a small piece of land. *Halsbury*, Vol. II at 689 says that—

“The descriptions of the parcels in a conveyance should correspond with the description in the contract of sale; but if the language used in the contract does not describe the land with sufficient clearness the purchaser is entitled to frame a new description.....”

It is apparent that a lease may contain one or more parcels i.e. lots, portions or pieces of land.

In the instant case the lease No. 61206 contained two parcels namely lots 10 & 13.

The Interpretation Ordinance says that the singular shall include the plural unless the context otherwise provides. When S.2 of the A.L.T.O. says that an agricultural holding is a parcel of agricultural land I think that the word ‘parcel’ includes parcels. A holding, in relation to land, is that land which is held by the

- tenants and his holding could consist of a parcel or parcels of land. I doubt if the
- A** Ordinance intended to enact that a holding should consist of a single parcel only. A tenancy agreement does not make reference to several holdings as comprising the land leased but it may refer to several parcels which comprise the holding to which the tenancy agreement refers. It seems to me that this is the way in which the A.L.T.O. uses the word holding. Part II of the Ordinance which deals with security of tenure contains provisions which indicate that the whole of the land referred to in a tenancy is described as 'the holding.'
- B** S.4(1) provides that where a person is in occupation of an agricultural holding a tenancy shall be presumed to exist—(under certain circumstances). S.9 (1) sets out conditions and covenants implied in a contract of tenancy of an agricultural holding which seems to pre-suppose that "the holding" constitutes the land which is the subject of the tenancy.
- C** That is supported by reference to S.9(1)(e) (ii) (iii) (iv) & (v) which prevent the tenant from assigning 'the holding' without consent; permit the landlord to enter upon 'the holding', require the tenant to cultivate 'the holding' and "to yield up 'the entire holding' on the expiration of the tenancy." Nowhere is there reference to "holdings" which might be expected if the lease or tenancy could be comprised of several holdings.
- D** S.9 (i) (f) requires the landlord to allow the tenant "to enjoy" 'the holding. It does not say holding or holdings.
- Thus it seems that the Ordinance accepts that all the land in the tenancy, no matter how many lots or parcels there are, is embraced of the rent in respect of an agricultural holding.
- E** S.14(1) states that the instrument of tenancy shall state the rent payable in respect of 'the holding'. The rent payable would not be in respect of part only of the land and since there can be several 'parcels' in a lease the rent must refer to all the parcels. They must be all the parcels in 'the holding.'
- Part IV covers the powers of an Agricultural Tribunal and S.21 (1) refers throughout to "the holding" in matters referring to compensation relating to a holding, reducing the size of a holding, recovering a holding.
- F** S.24 gives power to assess and certify the rent of "the holding."
- S.29 gives power to a tribunal to inspect "the holding."
- S.23 enables a tenant to terminate his tenancy and leave "the holding" under certain conditions. If the Ordinance contemplated more than one holding to a tenancy then it would speak of "the holding/or holdings" occupied under the tenancy.
- G** S.36 likewise enables the landlord to terminate the tenancy to recover possession of "the holding". On termination of a tenancy all the land held under it reverts to the landlord. Sections 35 and 36 refer the land held under the tenancy as "the holding".
- H** Therefore I do not regard a holding as necessarily consisting of only one plot or parcel of land.

If Mr Koya's contention were upheld it would open up a way to defeating the provisions of the Ordinance. For example split it into 20 plots of 2 acres, giving each one a number and a boundary and lease them all to one tenant under a single lease at one rent for the entire area. At the end of his tenancy the tenant seeking an extension under the Ordinance would be told that he did not have a 40 acre farm but 20 holdings of 2 acres each none of which qualified for an extension. A

For the foregoing reasons I regard lots 10 and 13 as forming one agricultural holding. B

Mr Koya had argued that lot 10 is described in the lease as appropriate to provide residential accommodation and could not be agricultural land. Only a small portion of lot 10 would be needed for building a house and there is nothing in the lease which says that the rest of it should not be used for agricultural purposes. I also believe D.W. 2, Raj Bali, that lot 10 is cultivated as part of a sugar cane farm for 20 years or more. C

In any event it is a small part of an area of land which is predominantly agricultural.

As I have pointed out this action was filed about 3 years after the tenant's application to the Tribunal was filed. It raises an issue which was currently being decided by the Tribunal and in my view the filing of this action was an abuse of Court process. D

The plaintiff will pay the defendant's taxed costs on the top scale.

Judgment for the defendant.