

IN THE PRIVY COUNCIL

No. 24 of 1976

ON APPEAL

FROM THE FIJI COURT OF APPEAL

B E T W E E N

GANGA RAM AND OTHERS

Appellants

-and-

GRAHAME & CO.

Respondents

CASE FOR THE RESPONDENTS

A.L. PHILIPS & CO.,
TERMINUS HOUSE,
6, HOLBORN VIADUCT,
LONDON, EC1A 2AH

PHILIP CONWAY THOMAS & CO.,
61 CATHERINE PLACE,
LONDON, SW1E 6HB.

Solicitors for the Respondents

Solicitors for the Appellants

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B E T W E E N :

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1. In these consolidated appeals the only issues that arise are whether:
 - (a) The judgment of the Court of Appeal is correct insofar as according to its terms the amounts ordered to be paid by the Respondents (Defendants) to each of the Appellants (Plaintiffs) are reduced by the amount of the judgments respectively entered in favour of the Appellants against the Public Trustee of Fiji; and
 - (b) If such judgment is in that respect wrong, the appeals should nevertheless fail, for the reason that the concession

attributed by Spring J.A. to Counsel for the Appellants is not one from which the Appellants should be allowed to resile.

2. Alternatively to 1(b), the Respondents will submit that the procedure adopted by the Appellants for raising the issue whether such a concession was in fact made is wholly inappropriate. The Judicial Committee should not be troubled to determine such a question. The proper procedure would have been, and still is, to move the Fiji Court of Appeal under Rule 22 of the Court of Appeal Rules to amend the judgment on the basis that it was vitiated by an error arising from an accidental slip. If the judgment of the Court of Appeal was formulated upon the erroneous assumption that counsel for the Appellants had conceded an entitlement on the part of the Respondents to a diminution of their ultimate liability by reference to the judgments entered against the Public Trustee, there is a clear case for the application of that rule.

3. The Respondents do not concede that the Court of Appeal made any such error. In this connexion it is submitted that the affidavit of Mr. Harilal Manilal Patel, which the Appellants seek to have admitted into evidence before the Judicial Committee,

is by no means clear on certain points:

first, because it seems implicit in paragraph 5 that the Appellants legal advisers were aware prior to the joinder of the Public Trustee as a defendant that Ram Mahesh had died without assets. In this situation, it seems intrinsically unlikely that a "concession" in terms of that deposed to in paragraph 8 of the affidavit would have been made; second, because the reference in such paragraph to a "joint and several" judgment "against the present Respondent" is obscure.

4. The Respondents will further submit that Mr. Harilal Manilal Patel as a partner in the firm of Ramrakhas, the Solicitors for the Appellants, after the delivery of the Judgment of the Court of Appeal on the 26th of November, 1975, did not raise the question of any error in the judgment of the Court of Appeal, but proceeded to seal the Judgment of ^{the} Court of Appeal on the 8th of December, 1975.
5. The Respondents do not seek to argue that, apart from any concession, the judgment of the Court of Appeal was correct insofar as it provided for the reductions mentioned in paragraph 1(a).
6. It is submitted on behalf of the Respondents that this appeal ought to be dismissed with costs, or, if allowed, allowed with an order for costs in favour of the Respondents for the following

REASONS:

- (a) The Appellants should not be released from the concession attributed to their counsel.

- (b) The Appellants have chosen an altogether inappropriate and unduly expensive method of correcting any accidental slip on the part of the Court of Appeal.

CSA

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B E T W E E N :

GANGA RAM AND OTHERS

Appellant

and

GRAHAME & CO

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CASE FOR THE RESPONDENTS

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