IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 338

Suit 5/1996

Between

Notandas Premchand
Jamnadas Udasi

… *Plaintiff*

And

Indian Overseas Bank

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Notandas Premchand Jamnadas Udasi v Indian Overseas Bank

[1997] SGHC 338

Suit 5/1996
Christopher Lau JC
13 December 1997

Judgment:

GROUNDS OF JUDGMENT

The claim

1. This was an action by the plaintiff for the following :

a) a declaration that an Indenture of Mortgage dated 17 December 1991 ("the legal mortgage") entered into between the defendants and the plaintiff in respect of the plaintiff's property at 6 Guillemard Lane, Singapore ("the property") was invalid and unenforceable as against the plaintiff and voidable at the instance of the plaintiff;

b) a declaration that an agreement purportedly entered into between the plaintiff and the defendants in or about December 1989 ("the alleged agreement") as well as the legal mortgage had been wholly rescinded and repudiated by the defendants;

c) a declaration that the plaintiff was entitled to have the property discharged from all claims under the legal mortgage,

2. Consequential orders were also sought by the plaintiff for the legal mortgage to be discharged and set aside, the delivery up by the defendants to the plaintiff of the legal mortgage for cancellation and the delivery up by the defendants to the plaintiff of all such other title deeds relating to the property as were in their possession or control and damages.

The result

3. On the conclusion of the hearing, I dismissed the plaintiff's action and awarded costs to the defendants on an indemnity basis.

The dispute

4. The plaintiff's case was that in an oral agreement reached between himself and the defendants in or about December 1989, the defendants had agreed to extend to his firm M/s Premchand & Sons ("the firm") additional credit facilities by way of overdraft on the firm's current account up to a limit of S$1.5 million in return for the legal mortgage on the property to secure the firm's past debts and these additional facilities. It was his case that after the oral agreement had been reduced into writing in the legal mortgage and the legal mortgage executed under seal and registered, the defendants in breach of the alleged agreement had not allowed the firm to draw on the additional facilities. For that reason and notwithstanding that it had been executed under seal, the plaintiff's case was that the legal mortgage was invalid and unenforceable for lack of consideration and he sought the discharge of the legal mortgage on the basis that the defendants had repudiated the alleged agreement and the legal mortgage.

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5. The defendants denied the alleged agreement or that any agreement had been concluded between the plaintiff and themselves for additional credit facilities. Their case was that the legal mortgage was merely a continuing security for amounts owed by the firm to the defendants in respect of banking facilities which the defendants had extended to the firm prior to 1985 and for such additional facilities as the defendants might in their absolute discretion agree to extend in the future. In any event as the legal mortgage had been executed under seal, it was the defendants' case that consideration was wholly irrelevant to its validity and enforceability.

6. In these circumstances, the issues were :

(a) was there a valid and enforceable contract between the parties,

(b) if so, were the terms of the contract as contended by the plaintiff, and

(c) if they were, had the defendants repudiated these ?

The background

7. The defendants are a bank incorporated in India with a branch office in Singapore. In 1987, following his father's death, the plaintiff was one of the three partners in the firm, the other two partners being his brother Mohanlal Premchand Krishnani ("Mohanlal") and one Lajwanti Chaturmal ("Lajwanti"). The firm had, from about 1951, been customers of the defendants. It had been granted credit facilities by the defendants by way of trust receipts, letters of credit, advances by way of overdraft and other forms of financing. These facilities had been secured as early as 1977 by an equitable mortgage of the property on the deposit of the property's title deeds with the defendants. The

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firm was never the registered owner of the property. In 1977, the plaintiff's mother was its registered owner. On her and the plaintiff's father's demise, the plaintiff in 1990 was formally registered as its owner. However although never registered in the firm's name, it was and remains an asset of the firm.

8. From time to time, the firm sought enhancement of the credit facilities from the defendants and until about mid 1984, the defendants allowed enhancement. These enhanced facilities continued to be secured, inter alia, by the deposit of the property's title deeds with the defendants.

9. By 1985, the amount owing on the facilities was about S$5 million. The defendants demanded repayment. The firm was unable to repay. As a result the defendants suspended the facilities. Although the facilities were suspended, interest on the facilities extended prior to 1985 continued to be charged by the defendants.

10. Following the father's death in January 1987, the plaintiff on 21 July 1987 as the sole beneficial owner of the property, executed a Deed of Undertaking in favour of the defendants. In this Deed of Undertaking, the plaintiff undertook at paragraph 1(ii)(c) that as and when required by or called upon by the defendants, he would at his own cost and expense duly execute and deliver to the defendants a registrable first legal mortgage (in such form and containing such conditions stipulations covenants and terms as the defendants might require) of the property in the defendants' favour, for securing the overdraft credit line and other banking facilities up to the aggregate limit of S$1 million either already granted or to be granted on the current or other account(s) of the firm with the defendants. He further agreed that pending the execution and registration of the legal mortgage, he would not create any other mortgage (except in favour of the defendants) or otherwise encumber the property.

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11. The defendants remained equitable mortgagees of the property.

12. On or about 26 June 1990, the plaintiff as the beneficial owner of the property and as a partner of the firm executed the legal mortgage under seal. Mohanlal and Lajwanti followed on 5 July 1990.

13. On or about 23 July 1990, a Deed of Assent was executed by Mohanlal and the plaintiff's other siblings formally conveying the property to the plaintiff absolutely as the surviving partner of the firm.

14. On 10 August 1991 the defendants registered a caveat on the property ("the caveat"). They did so as equitable mortgagees by virtue of the plaintiff's, Mohanlal's and Lajwanti's having executed in escrow or having agreed to execute a first legal mortgage of the property in favour of the defendants to secure banking facilities up to a limit of S$1.5 million and interest and by virtue also of the defendants "having allowed or permitted" the partners of the firm "to draw on the said account current".

15. On 26 December 1991, the legal mortgage was formally registered at the Registry of Deeds as a first legal mortgage.

The legal mortgage

16. As it was the plaintiff's submission that the terms of the legal mortgage supported his case, I set out the terms that he relied on in full. In the Recital to this document, it was stated (the defendants being referred to as "the Bank", the plaintiff as "the Mortgagor" and the firm as "the Borrowers" throughout this document):

"WHEREAS:

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1. The Borrowers are partners carrying on business in the name or under the style of "PREMCHAND & SONS" at #02-02 High Street Plaza, Singapore (hereinafter called "the Firm") and have opened or are about to open an account current with the Bank (hereinafter referred to as "the said Account") in the name of the Firm.

2. The Mortgagor is seised of the land and premises described in the Schedule hereto (hereinafter referred to as "the Mortgaged Property") for an estate in fee simple in possession free from encumbrances.

3. At the joint request of the Mortgagor and the Borrowers the Bank has made advances to the Firm by permitting the said Account to be overdrawn AND also agreed that the Bank may make further advances by permitting the said Account to be further overdrawn or may make advances by way of overdraft on any new or other account which the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person may open or have with the Bank or otherwise may give credit or banking facilities or grant other accommodation to the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person up to the limit of Dollars One million and five hundred thousand (S$1,500,000.00) for principal moneys with liberty to the Bank to increase such limit up to such further or additional amount as may be fixed by the Bank at its absolute discretion.

4. It has been agreed between the Mortgagor the Borrowers and the Bank that all moneys which are now owing or which shall hereafter be owing or remain unpaid to the Bank on the general balance of the said Account or on any other account or otherwise from the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person together with interest shall be secured to the Bank in manner hereinafter appearing."

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17. The parties then covenanted in the body of the legal mortgage in the following manner :

"NOW THIS INDENTURE WITNESSETH as follows :

1. In pursuance of the said agreement and in consideration of the premises the Mortgagor and the Borrowers hereby JOINTLY AND SEVERALLY COVENANT with the Bank TO PAY to the Bank -

(a) on demand in writing made to the Mortgagor the Borrowers and/or the Firm the balance which at the date of such demand shall be owing to the Bank by the Firm on the said Account or by the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person on any other account which the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person may have with the Bank .....

(b) interest on daily balances on or in respect of the principal moneys hereinbefore covenanted to be paid or any part thereof as shall from time to time be owing or remain unpaid at the Bank's ruling prime rate plus one per cent (1%) per annum or at such other rate as may from time to time be fixed by the Bank with monthly rests or at such periodical rests at the absolute discretion of the Bank; and

(c) .....

2. For the consideration aforesaid the Mortgagor HEREBY CONVEYS unto the Bank ALL the land and premises described in the Schedule hereto TO HOLD the same unto the Bank its successors and assigns in fee simple subject to the proviso for redemption hereinafter contained.

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PROVIDED ALWAYS that if upon such demand as aforesaid or without demand the Mortgagor and the Borrowers or either of them shall pay to the Bank all moneys hereby covenanted to be paid the Bank will at the request and cost of the Mortgagor and the Borrowers or either of them reconvey the property hereby mortgaged to the Mortgagor or as the Mortgagor shall direct.

3. .....

4. PROVIDED ALWAYS and it is hereby agreed and declared by and between the parties hereto as follows :-

(a) .....

(b) These presents and the Mortgaged Property shall be and remain a continuing security for the payment to the Bank on demand of the advances which the Bank may hereafter make to the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person and whether as principal or as surety and for any balance which may be owing or remain unpaid on the said Account or on any other account whatsoever to the Bank by the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person together with interest as provided in this Mortgage.

(c) .....

(d) The Mortgagor the Borrowers and the Firm shall be jointly and severally liable to the Bank and the Mortgaged Property shall be a security to the Bank not only for all moneys actually debited to the said Account or to any other account which the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any person may have with the Bank at the time when demand

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shall be made for payment but also for all moneys outstanding and not immediately payable for which the Mortgagor the Borrowers and the Firm either alone or jointly or jointly with any other person is or are absolutely or contingently liable to the Bank in any manner howsoever.

(e) .....

(f) .....

(g) This Mortgage shall be a continuing security and shall continue to be valid and binding for all purposes notwithstanding :-

(i) any account ceasing to be current or any settlement of account or fluctuation in the amount for the time being owing to the Bank or the existence of any credit balance at any time;

(ii) .....

(iii) .....

(i) .....

(j) The interest on any principal money for the time being secured by this Mortgage including capitalised interest shall at the end of each calendar month or at the end of such period as may be determined by the Bank be capitalised and added for all purposes to the principal sum then owing and shall thenceforth bear interest at the rate covenanted to be paid under this Mortgage and be secured and payable accordingly and all the covenants and conditions contained in or implied by these presents and all powers and remedies conferred by law or by these presents and all rules of law or equity in relation to the said principal

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moneys and interest shall equally apply to such capitalised interest and to interest on such arrears.

(k) For the purposes of ascertaining whether the limit of the principal money intended to be secured by this Mortgage has been exceeded or not all accumulated and capitalised interest shall be deemed to be interest and not principal money.

....."

The decision

18. I saw no merit in the plaintiff's case.

19. There is no doubt the parties had reached an agreement and that the legal mortgage was that agreement and contained its terms. As the document had been executed under seal, it was valid and enforceable and took effect according to its terms notwithstanding the absence of any consideration : see Halsbury Laws of England Vol. 12 (4th Edn.) paragraph 1355 at page 536; Development Bank of Singapore Ltd v Yeap Teik Leong & Ors [1988] 3 MLJ 443. So to rescind the agreement and discharge the legal mortgage, the plaintiff had to show that the defendants had repudiated it by breaching its terms.

20. What were the terms ? They were not, as the plaintiffs argued, that the defendants were obliged to extend additional credit facilities of S$1.5 million to the firm on its current or any account and that that was the basis for the legal mortgage. Clauses 1 and 3 of the Recital and the covenanting clauses 1, 2 and 4 in the body of the document did not say that the defendants were obliged to extend additional credit facilities of S$1.5 million or of any sum. Neither was

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there any basis for the plaintiff's argument that in the Recital, clause 4 was to be subordinated to clauses 1 and 3. The terms of the legal mortgage were clear : the parties had not agreed that the defendants were to extend credit facilities of S$1.5 million or of any sum to the firm on the firm's current or any account. On the contrary clause 4 of the Recital and clauses 1 and 4(b) and (d) in the body of the document showed clearly that the object of the legal mortgage was to secure amounts already owed and any further amounts the defendants might in their sole and absolute discretion decide to extend. These clauses did not state that the defendants had agreed to extend credit facilities of S$1.5 million to the firm and that that was the basis for the legal mortgage.

21. That this is what the parties intended and agreed is confirmed by the Deed of Undertaking that the plaintiff executed in 1987 and such of the correspondence between the firm and the defendants that the plaintiff was prepared to admit in evidence in the course of the hearing.

22. The correspondence was telling. It covered the period between 1986 and 1994. It comprised letters written either by the plaintiff or his brother Mohanlal on the firm's letterhead to the defendants and letters written by the defendants to the firm. Not surprisingly, the plaintiff put the defendants to strict proof of these letters even though these had either been written by his brother or by him. They were admitted only in the course of the hearing. These were exhibits "D1 - D7" and the others were identified and marked as "DB-109", "DB121 - 122", "DB-155", "DB-156", "DB-158", "DB-208", "DB-213", "DB-248" and "DB-295" in the defendants' bundle of documents.

23. These, together with the Deed of Undertaking (which the plaintiff also put the defendants to strict proof of before he was prepared to admit it in evidence) showed that far from the legal mortgage being the security for the alleged

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additional credit facilities, the plaintiff and his brother had during the entire period from 1987 to 1994 simply been asking the defendants to waive or at least partially reduce the interest being charged by the defendants on the unpaid facilities that the defendants had extended to the firm until 1985 and to lift the defendants' suspension of the firm's facilities. They said nothing about the agreement allegedly concluded in 1989 between the plaintiff and the defendants and they did not at all indicate that the legal mortgage was to be security for the alleged additional credit facilities of S$1.5 million. Indeed after the legal mortgage was registered in December 1991 and as late as 1994, some three years later, neither the plaintiff nor Mohanlal had in their discussions and meetings with the defendants put the case the plaintiff sought to advance at the hearing.

24. The correspondence showed the defendants were equitable mortgagees of the property even before the legal mortgage was registered in December 1991, that the defendants were quite concerned throughout to 'perfect' their equitable mortgage by having the legal mortgage executed and registered (which was the raison d'etre for the Deed of Undertaking), that the legal mortgage was to be a continuing security for the firm's past debts and crucially that no agreement had been concluded requiring the defendants to extend additional credit facilities of S$1.5 million to the firm.

25. Nothing that was said by the plaintiff and Mohanlal in evidence pointed to any other conclusion. Their evidence was notable for its selectiveness, contradictions and inconsistency. I refer to some instances to illustrate.

26. Mohanlal and the plaintiff had had numerous meetings and discussions with the defendants. Yet his evidence-in-chief was remarkable for its brevity. All he was prepared to say in his affidavit of evidence-in-chief was that he had transferred his interest in the property to the plaintiff, by signing the Deed of

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Assent in 1990, to enable the plaintiff to mortgage the property to the defendants for the additional facilities.

27. He did not refer in his affidavit of evidence-in-chief, as he could have, to the meetings and discussions that he, either alone or together with the plaintiff, had had with the defendants' officers in relation to the execution and registration of the legal mortgage and to the various letters he had written to the defendants. This perhaps was not surprising since those letters, which I have already referred to, made no mention at all of the alleged agreement. For example, in his letter of 14 January 1989 (exhibit "D4") he referred only to estate agents having been appointed to dispose of the property, to the market value of the property being S$1.5 million, to a request for a waiver of interest and to the almost insurmountable difficulties faced by the firm in having to pay the outstanding amounts owed to the defendants.

28. Similarly in his letter to the defendants a few days later, on 24 January 1989 (exhibit "D-5) he referred to the defendants pointing out their concern that the mortgage of the property had yet to be perfected and to the steps which were being taken by him to address their concern. That showed the legal mortgage of the property was contemplated long before the alleged agreement.

29. When he was cross-examined on the alleged agreement, he did not actually say the defendants had approved the additional credit facilities. What he said (at page 145 A to C of the notes of evidence) was that K. Rajagopal, the defendants' chief executive officer (whom the plaintiff alleged had agreed to the additional facilities on the defendants' behalf), had only indicated that such facilities could only be approved by the defendants' head office in India and that he would try to obtain such approval. That was not the same as saying that approval had been granted.

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30. As for the plaintiff, firstly when he executed the Deed of Undertaking in 1987, that must have meant that the parties had discussed the creation of a legal mortgage at the time, that is in or about July 1987. Until he was confronted with this document in cross-examination, he maintained that such discussion had only taken place towards the end of 1989. When he was then confronted with this Deed of Undertaking, his answer was illuminating. He said initially (at page 49 A to B of the notes of evidence) :

"I don't know how to answer this."

Then he alleged that he had not read this document and that he had signed it on his brother's advice. Secondly, although he alleged that he was informed on 26 September 1990 of the defendants' refusal to extend additional credit facilities of S$1.5 million, he could not satisfactorily explain why the firm's letter only two days later on 28 September 1990 written by his brother to the defendants ("DB-121") did not allege, if in fact the alleged agreement had been concluded, that the defendants had breached it.

31. The evidence given by the defendants' witnesses in contrast, was consistent with the documentary evidence that I referred to earlier. I was also impressed by their candour.

32. The collective evidence of Mr V.O. Balagangadaran, the defendants' regional manager and chief executive officer of its branch in Singapore between 21 May 1984 and 17 February 1989, Mr K. Rajagopal, the chief executive officer of the defendants' Singapore branch between 17 February 1989 and 15 September 1993, Mr B. Swaminathan, the defendants' Singapore branch's present chief executive officer and Mr M.V. Narayana Moorthy, the senior manager of the defendants' Singapore branch in summary, was that the

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defendants had from as early as 1985 become so concerned by the large amount outstanding by the firm that they 'froze' the firm's accounts with the defendants, refused any further facilities, pressed for the outstanding amounts to be paid, for the equitable mortgage to be 'perfected' by the legal mortgage and it was that the plaintiff agreed that the legal mortgage was to be in respect of the firm's outstanding debts. That was why the plaintiff executed the Deed of Undertaking in 1987 as the property at the time had yet to be formally conveyed to him by his siblings and that was why the plaintiff and the firm's partners executed the legal mortgage in June and July 1990 and agreed to its registration. The defendants had never agreed to extend any additional credit facilities to the firm.

33. The plaintiff had not in the circumstances, on a balance of probabilities, proved his case. He had not shown the defendants had repudiated any agreement, and he had not shown any basis for avoiding, rescinding or discharging the contract as embodied in the legal mortgage.

34. The plaintiff's claim was accordingly dismissed with costs on an indemnity basis as provided under the terms of the legal mortgage.

Dated the 13th day of December 1997.

CHRISTOPHER LAU JC

Solicitors : M/s Manjit Samuel & Partners

M/s Derrick, Ravi & Partners

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Christopher Lau JC

Manjit Singh and Samuel Chacko for the plaintiff
Sreenivasan, P S Raj and Charles Lin for the defendants

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