Michaelmas Term
[2019] UKPC 39
Privy Council Appeal No 0078 of 2014

JUDGMENT

Seebun (Appellant) *v* Domun and others (Respondents) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Carnwath
Lord Hodge
Lady Black
Lady Arden
Lord Sales

JUDGMENT GIVEN ON

21 October 2019

Heard on 17 July 2019

Appellant
Me Poonam Sookun-Teeluckdharry
(Instructed by Steven & Associates,
Law Firm (Mauritius))

Respondent
Me Madan Dulloo
(Instructed by PR Legal
(Mauritius))

LORD HODGE:

1. This appeal raises questions about the acquisition of ownership of immovable property through acquisitive prescription and the loss of a right of action through extinctive prescription. Before discussing the law and the parties' submissions, the Board sets out the facts as found by the trial judge, Judge G Angoh in his judgment dated 3 March 2011 and the Board's conclusions on the challenge to the findings of fact which the respondents have advanced in this appeal.

2. The appeal comes before the Board from a final order of the Court of Civil Appeal of the Supreme Court dated 23 August 2012 and with final leave to appeal from that court dated 2 June 2014. Negotiations between the parties to resolve the matter having failed, the respondents raised proceedings in Mauritius to compel the appellant to quit the disputed property. The appeal to the Board, having been struck out on 14 September 2017, was reinstated by a panel of the Board on 26 March 2019. The respondents in their written case to the Board have contended that they were not given an opportunity to object to the reinstatement of the appeal. This is not correct. Included in the papers before the Board is a certificate from a Supreme Court usher that on 14 December 2017 he served the appellant's application to reinstate the appeal on the first and second respondents and left a certified copy of the application at the feet of the third respondent, after he had refused to accept service of the document. Further certificates from a registered court usher dated 14 and 16 July 2018 vouch service on the respondents of an application to reinstate the appeal and an affidavit by the appellant dated 11 July 2018. The respondents' attorneys and the third respondent also submitted written representations to the Board opposing the reinstatement of the appeal which the Board received respectively one month and two weeks before its decision to reinstate. The proceedings in Mauritius for recovery of the disputed land appear to have proceeded in 2018 while the appellant, to the knowledge of the respondents, was pursuing this application. The progress of the application was delayed by the appellant's lack of financial resources. It is very regrettable that people with limited financial means have incurred the expense of so much litigation in this dispute.

Background facts

3. The appeal concerns the ownership of a plot of ground amounting to 37.75 perches at Camp Thorel, in the District of Flacq ("the Plot"). Mr Sardhanand Seebun ("the appellant") claims that he and his siblings, Atmaram Kawal and Sita Devising Kawal, are the heirs of their father, the late Lekha Kawal, who died on 18 May 1999, and are entitled to claim ownership of the Plot through the father's possession of the Plot for the requisite period to found acquisitive prescription. The respondents claim ownership of the Plot on the basis that they have a title deed to a larger area of land,

amounting to 87.5 perches ("the Larger Site"), which was transcribed in volume 1338 No 130 in 1976, and which includes the Plot within its boundaries.

4. Lekha Kawal applied in 1976 to the Conservator of Mortgages for the transcription of an affidavit of prescription in respect of the Plot, with the aim of obtaining documentary recognition of his ownership of the Plot. The late Banseelall Domun (whose widow and children are the first respondents) and the second and third respondents objected to the application. Lekha Kawal appears to have taken no further action to establish his title before his death, and it was only in 2003 that his son, the appellant, raised an action before the Supreme Court in which he sought four orders, which were (i) for the setting aside of the respondents' objections to the application for the transcription of Lekha Kawal's affidavit of prescription, (ii) for a declaration that the late Lekha Kawal had become the owner of the Plot by acquisitive prescription, (iii) for an order that the Conservator of Mortgages transcribe the affidavit of prescription and (iv) for an order restraining and prohibiting the respondents from interfering with the appellant's occupation and enjoyment of the Plot.

5. At trial in 2010, the appellant gave evidence and called as a witness the 82-year-old Ramanund Seebun, who was secretary of the Satium Co-operative Credit Society, and Mr Jahal Anand, an assistant inspector, who spoke to documentation from the Sugar Insurance Fund Board ("SIFB"). The respondents' witnesses were Mrs Krishnawatee Domun ("Mrs Domun"), who is the widow of Banseelall Domun and mother of the other first respondents, and her brother-in-law, Dhurumdeo Domun, the third respondent.

6. Mr Ramanund Seebun's evidence, which the trial judge accepted, was that he had known the Plot since he was five years old, which would have been since 1933, and that the land had been occupied first by Pitambar Kawal (the appellant's grandfather) and then by Lekha Kawal. He estimated, inaccurately, that Pitambar Kawal had possessed the Plot since 1950. But as there was evidence, which the trial judge accepted, that Pitambar Kawal died in 1946, the grandfather's occupation, which the witness described as continuous and suggested had lasted several years, preceded that year, as the trial judge found. Mr Ramanund Seebun also spoke of the appellant's grandfather, then father and then the appellant occupying the Plot and growing sugar cane on it. He spoke to documents which showed that Lekha Kawal had sold sugar cane from the Plot to the Satium Co-operative from 1969 to 1979. When asked whether there was any house located on the Plot, he said that there was not. The appellant, who was born in 1958, said that since he had had an active memory, he knew that his father had possessed the Plot and grown sugar cane on all of it until his death. Since his father's death in 1999, he had continued to grow sugar cane on the Plot. He denied that a house had been built on the Plot. Jahal Anand's evidence, which was derived from SIFB documents, was that Lekha Kawal had been registered as a planter with the SIFB since 1960 and had been cultivating a plot of 37 perches at Camp Thorel since 1961.

7. The appellant and Ramanund Seebun also spoke of an action for damages for trespass, which Lekha Kawal had raised in 1980 in the District Court of Moka, against Anand Dhoomun for having cut down his crop of sugar cane in July 1980. In that action Lekha Kawal had given similar evidence about the occupation of the Plot by his father and himself and a neighbour, Mr Padaruth, and Ramanund Seebun had given supporting evidence. The judgment of the District Judge, which was produced in evidence, recorded that evidence. She was satisfied that Lekha Kawal had occupied the Plot for at least a year, which was the period of occupation required to entitle him to the remedy, and that he had planted the crop. She therefore awarded damages and ordered the defendant not to trespass on the Plot in future.

8. The appellant also sought to lead the evidence of the sworn land surveyor, Kadafi Koherattee, who had surveyed the plot in May 2007 in the presence of the appellant and a representative of the respondents and whose survey was produced to the court. Unfortunately, he did not respond in a timely manner to an order to attend court to give evidence and arrived at the court after the appellant had had to close his case. The respondents' counsel initially sought to call him as a witness, but, after legal argument, did not insist in his application. As a result, neither party obtained his oral evidence.

9. Mrs Domun gave evidence that she had moved to the Larger Site (ie the 87.5 perches) when she married the late Banseelall Domun in 1982. She explained that the Larger Site had been divided into three and each brother had his own house on the site. She could not speak to the occupation of the Plot before 1982 but confirmed the title deed for the Larger Site dated 9 September 1976 and transcribed in vol 1338/130, which recorded that a six-room house was being constructed. The third respondent confirmed the title deed and gave evidence that when, shortly after the date of the title deed, Lekha Kawal had sought to have an affidavit of prescription transcribed, he and his brothers had lodged an objection. He said that his father had occupied the land and had grown sugar cane. When asked to identify the neighbours who resided near the Plot, he replied that they were Mrs Domun, his brother and himself and said that the Plot was part of the Larger Site. He said that sugar cane had been grown on the Plot and that his father had done so but he had no documentary evidence to support that assertion. He did not know who currently grew sugar cane on the Plot. In response to a question on cross-examination, he accepted that there was only sugar cane on the Plot.

10. In their objection to the affidavit of prescription the second and third respondents and the late Banseelall Domun had asserted (i) that they had title to the Larger Site, (ii) that Lekha Kawal had never occupied the Plot for 20 years as he had asserted in his affidavit, (iii) that the contents of the affidavit were false and (iv) that they had built houses on the Plot. Judge Angoh did not accept any of those grounds of objection. He focussed on the possession of the Plot before 1976 when the respondents had objected to the transcription of the affidavit of prescription as he treated the lodging of the objection as amounting to an interruption of prescription. He accepted the evidence of Ramanund Seebun that both Pitambur Kawal and Lekha Kawal had always occupied

and planted sugar canes on the Plot. He referred to the documentary evidence which supported Lekha Kawal's use of the Plot to plant sugar cane in the 1960s and 1970s. Notwithstanding the valiant efforts of Mr Dulloo for the respondents, the Board is satisfied that the trial judge was entitled to conclude (i) that the evidence of Ramanund Seebun, which was not challenged, fixed the commencement of the possession of the Plot by the Kawal family in 1933, when the witness was five years old, (ii) that by 1976 Lekha Kawal and before him his father had occupied the Plot for over 30 years and (iii) that the respondents had never occupied the Plot, before or after 1976. He also recorded that there was no dispute as to the identity of the Plot: the name of the recorded owner of land on the fourth side of the Plot should have been "Dhomun" (or Domun) and not "Jhomun" as stated in the second amended plaint with summons.

11. The trial judge granted the appellant the orders which he sought. The respondents appealed to the Court of Civil Appeal. The Court of Civil Appeal quashed the judgment and held that the action was an "action personelle" which was time-barred by extinctive prescription. In the course of the hearing the Court of Civil Appeal pointed out that neither the affidavit of prescription nor the objections had been produced, that the other heirs of Lekha Kawal had not been called as parties and that the action had not been served on the Conservator of Mortgages.

12. There is no need for the Board to consider in this appeal the appellant's request for an order for the transcription of the affidavit of prescription as the appellant has been unable to produce it or otherwise satisfy the Board that its terms comply with the requirements of the Affidavits of Prescription Act 1958. To that extent, the Board agrees with the Court of Civil Appeal that the action was misconceived. The Board also notes that the Court of Civil Appeal were not properly assisted by counsel who then appeared for the appellant who to the Board appears to have been confused as to the nature of his client's case. He conceded that Lekha Kawal had not been in possession of the Plot for a sufficient number of years, which he took to be 30 years instead of 20 years, when the affidavit of prescription was drawn up in 1976 and asserted that he was founding on occupation from 1954 onwards. This was inconsistent with the trial judge's findings and unnecessarily complicated the task of the Court of Civil Appeal.

Discussion

13. The principal issues in this appeal are (i) whether the appellant's authors had possession of the Plot of the necessary quality to entitle Lekha Kawal to become its owner by acquisitive prescription and (ii) whether the appellant's action is time-barred by extinctive prescription. The Board will also address the challenge that the appellant failed to make his siblings parties to the action.

i) Acquisitive prescription

a) The legal framework

14. In its discussion of the legal framework the Board refers to articles of the Civil Code.

15. In the context of this case, there are six important features of the law of acquisitive prescription. First, acquisitive prescription is a means of acquiring ownership (article 712). Acquisitive prescription by possession without the support of a title requires possession for a period of 30 years (articles 2261 and 2262). But between 1883 and 1 January 1984 the period was 20 years (article 3 of Ordinance No 16 of 1883). The period was then increased to the current period of 30 years by Act No 9 of 1983, which in a transitional provision in section 72(12) preserved the rights acquired by the shorter period of prescription before its commencement. See to this effect the judgment of the Court of Civil Appeal in *Rioux v Esplacathose* 2003 SCJ 248. Secondly, acquisitive prescription does not arise by operation of law. A person who has had the necessary possession must assert his or her ownership of the property as a result of acquisitive prescription. This is evident from the rule that it is not within the power of the judge ex proprio motu to establish someone's ownership by prescription (article 2223). It is also apparent from the rule that one can renounce the right conferred by prescription after it has been acquired (article 2220). Thirdly, the quality of possession that is required to acquire ownership by prescription is set out in article 2229 in these terms:

> "Pour pouvoir prescrire, il faut une possession continue et non interrompue, paisible, publique, non équivoque, et à titre de propriétaire.
>
> Pour prescrire en matière immobilière, la possession doit, en outre, présenter un caractère apparent, manifesté par des signes matériels extérieurs, tels qu'une construction, un mur bâti servant de clôture, des plantations."

Fourthly, there is a presumption that a person possesses for himself and by right of ownership if it is not proved that he commenced his possession on behalf of another (article 2230). Fifthly, one can aggregate one's own possession with that of one's author towards the achievement of possession for the prescriptive period; article 2235 provides:

> "Pour compléter la prescription, on peut joindre à sa possession celle de son auteur, de quelque manière qu'on lui ait succédé, soit à titre universel ou particulier, soit à titre lucratif ou onéreux."

Sixthly, prescription can be interrupted naturally through loss of possession or civilly by a legal challenge to the possessor. Article 2244, which addresses the latter, provides:

> "Une citation en justice, un commandement ou une saisie, signifiés à celui qu'on veut empêcher de prescrire, forment l'interruption civile."

In a case such as this the court is concerned with a "citation en justice", or writ of summons, served on the person who is seeking to build up prescriptive possession rather than a demand for payment or a seizure of property.

16. A person asserting his ownership of property by acquisitive possession can raise an action seeking a declaration of his right of ownership and section 3 of the Transcription and Mortgage Act 1864 provides for the transcription of a judgment declaring the existence of any right in immovable property.

17. A potentially less expensive way of establishing a right of ownership of immovable property by acquisitive prescription, which is suitable if there is no serious contest as to ownership, is the procedure set out in the Affidavits of Prescription Act 1958, which allows the person claiming ownership of immovable property to apply to the Conservator of Mortgages for the transcription of an affidavit of prescription. Such an affidavit must comply with the requirements as to content of section 3 of that Act. The Conservator of Mortgages maintains a register of such affidavits which is open to public inspection (section 5). The application is published in the Gazette and any person interested in the immovable property can object by sending the Conservator of Mortgages a notice setting out the grounds of objection (sections 4(2) and 6). The Act provides for a speedy resolution of the objection by an application to a judge in chambers, who can set aside the objection if it is frivolous and unjustified or can refer the parties to a competent court (section 7). The Conservator of Mortgages is prohibited from transcribing the affidavit in the face of an objection unless the objection is withdrawn or set aside (section 8). Section 10 provides that deeds of sale or transfer of immovable property, in which title is derived from acquisition by prescription witnessed by an affidavit of prescription, are not valid unless the affidavit has been transcribed and the particulars of transcription are endorsed on the deed. The affidavit of prescription if transcribed may thus act as a link in title to immovable property. But the transcription of the affidavit of prescription does not of itself confer rights as section 12 provides:

> "The transcription of an affidavit of prescription shall not confer on any party any rights on any immovable property which but for this Act such party would not have possessed."

18. The Board was not addressed by counsel on the effect of the application for transcription of an affidavit of prescription as a means by which a person can publicly assert the acquisition of ownership by prescriptive possession. The affidavit itself does not confer any rights: *Foolman v Chaytoo* 1966 MR 191. In the absence of authority to the contrary, the application does appear to be a public assertion of ownership as it is advertised in the Gazette and it negatives any inference of renunciation of ownership acquired by prescription under article 2221. Similarly, the Board was not addressed on the effect of an objection beyond its effect under the Affidavits of Prescription Act. In response to a question from the Board, Mrs Sookun-Teeluckdharry submitted that an objection under the Act did not amount to a "citation en justice" under article 2244 so as to amount to a civil interruption of acquisitive prescription. The Board does not consider that it is in a position to determine whether such an objection interrupts acquisitive prescription as it has not heard detailed submissions from the parties. The Board notes that Judge Angoh treated the objection as amounting to civil interruption and is prepared to proceed on the basis that he was correct to do so as it makes no difference to the outcome of this appeal.

b) Application to the facts

19. The appellant's case at trial, which the trial judge accepted, was that his grandfather and father had possessed the Plot and had grown sugar cane on it from 1933 or in any event from some time before the grandfather's death in 1946. Such possession was peaceful, conducted in public and not attributable to any title other than ownership. The growing of crops is recognised in article 2229 as clear manifestation of possession. The possession of the appellant's grandfather and father, which had lasted for over 30 years before 1976, occurred at a time when the period for acquisitive prescription was 20 years. Even if the objection in 1976 might operate as a civil interruption under article 2244, the possession of the Plot by the appellant's grandfather and father had already given the father an entitlement to claim ownership of the Plot by prescriptive acquisition.

20. Before the appellant raised the current proceedings in 2003, the respondents and their authors had not issued any legal proceedings to challenge the possession of the Plot by the appellant's forebears. On the trial judge's findings of fact, the appellant's father continued to possess the Plot after 1976 until his death in 1999 and since then the appellant has possessed the Plot.

21. The Board is therefore satisfied that, subject to the question of extinctive prescription which it addresses below, the appellant has established that Lekha Kawal became the owner of the Plot by acquisitive prescription by 1976.

ii) Extinctive prescription

a) The legal framework

22. The Civil Code draws a clear distinction between "les actions réelles" and "les actions personelles". The distinction reflects the distinction in civilian legal systems between the law of property, which concerns real rights, and the law of obligations, which is concerned with claims by a creditor against a debtor founding on a personal obligation of the latter whether imposed by contract or by the law. Thus, a real action is an action to establish or exercise a real right in a thing; a personal action is an action to have a personal right recognised or enforced (Nouveau Répertoire Dalloz p 81: Répertoire de Procédure Civile Dalloz (March 1997) pp 5-7, paras 13 and 16).

23. Different rules of extinctive prescription apply to real actions and personal actions. The general rule for real actions is that they must be raised within 30 years of the cause of action coming into being. But an owner of immovable property does not lose his or her ownership through extinctive prescription even if he or she has lost possession of the property; ownership of an immovable is lost only by someone else acquiring ownership of it by acquisitive prescription. The rules are set out in articles 2268 and 2269:

> "2268. Toutes les actions réelles sont prescrites par trente ans, s'il n'en est autrement fixé par la loi.
>
> 2269. Les dispositions de l'article 2268 ne s'appliquent pas à l'action en revendication intentée par le propriétaire dépossédé de son immeuble.
>
> Cette action peut être exercée tant que le défendeur ne justifie pas être lui-même devenu propriétaire de l'immeuble revendiqué par l'effet de la prescription acquisitive."

Where an owner has not been dispossessed of his or her immovable property by another but continues in possession, he or she needs to take no legal action to defend his or her right of ownership. A cause of action to assert ownership renews itself every day. Ownership of immovable property, once obtained, is not lost by extinctive prescription:

Marcel Planiol, Treatise on the Civil Law vol 1 Part 2 (12th ed 1939) translated by the Louisiana State Law Institute, paras 2446-2447. Different rules apply to movable property to which, as a general rule, possession gives title and revendication is available solely in the case of loss or theft for a period of three years after the event (article 2282).

24. Personal actions by contrast are as a general rule barred by extinctive prescription ten years after the cause of action arose. Article 2270 provides:

> "Sous réserve des dispositions particulières de la loi, les actions personnelles se prescrivent par dix ans."

b) Application to the facts

25. The Court of Civil Appeal treated the appellant's action as a personal action and stated that it was barred by the ten-year extinctive prescription. The Board respectfully disagrees. The nature of the action must be assessed by reference to the orders which the plaintiff seeks from the court. As the Board has observed (para 4 above) the orders requested included a declaration that the late Lekha Kawal had become the owner of the Plot by acquisitive prescription. This was a claim to establish a real right in a thing and to that extent the action was "une action réelle": *Ramjatan v Nowbuth* 2014 SCJ 252, per Judge Chui Yew Cheong. This action combines an application for orders setting aside the respondents' objections and requiring the Conservator of Mortgages to transcribe the affidavit and also a declaration of ownership of the Plot. As a result, the action is, in the Board's view, "une action mixte" or mixed action. Such actions are defined in the Nouveau Répertoire Dalloz (p 81, para 36) in these terms:

> "Les actions mixtes sont celles qui emportent tout à la fois contestation sur un droit personnel et sur un droit réel …"

The ten-year extinctive prescription, which applies to personal actions, did not apply to this action because the appellant is asserting and seeking to protect a right of ownership in immovable property.

26. If the 30-year extinctive prescription applied to the appellant's action, he raised his action in 2003 about 27 years after the challenge which the respondents mounted by making their objection in 1976. But it appears to the Board that the 30-year prescriptive period did not apply at all. If, as the trial judge found, the objection in 1976 operated as a civil interruption of prescription under article 2244, it would be consistent with that position that the application by Lekha Kawal to the Conservator of Mortgages was a juridical act which was sufficient to set up ownership by the operation of acquisitive prescription and that his ownership could thereafter, if not before, be protected by an

"action en revendication". Even if the objection were not sufficient to interrupt prescription, which is a point on which the Board expresses no view, the lodging of an affidavit of prescription would still be such a juridical act. Once the possessor has elected to set up his or her ownership which results from acquisitive prescription, the declaration of the court recognises rather than constitutes that ownership. It is the fact of possession for the required period combined with the possessor's act to set up his or her ownership based on acquisitive prescription which creates ownership. Contrary to Mr Dulloo's submission, the appellant's father did not need the transcription of an affidavit under the Affidavits of Prescription Act or a court order to establish his ownership as a precondition of an action of revendication; his assertion of ownership, by seeking the affidavit of prescription following on possession for the prescriptive period, conferred that title.

27. The Board therefore concludes that the appellant's claim is not barred by extinctive prescription.

iii) The consent of the heirs

28. It only remains to consider the respondents' plea that because the appellant had failed to join the other heirs of the late Lekha Kawal, namely Atmaram Kawal and Sita Devising Kawal, as parties to his action his plaint with summons should be set aside.

29. Mrs Sookun-Teeluckdharry submitted that the appellant's siblings had consented to his pursuit of the claim and were aware of the proceedings. She also submitted that a co-proprietor had the power to raise an "action conservatoire" such as an "action en revendication" without involving his co-proprietors in the action and that in any event under the Supreme Court Rules 2000 a non-joinder of a party did not defeat the cause of action. She referred to a judgment of the Chief Justice (Pillay) in the Court of Civil Appeal in *Choo Ping Fen v M B Tickfine* 1998 SCJ 38; 1998 MR 7. In that case, the appellants, who had been defendants at first instance, argued that the respondents as "indivisaires" were not allowed to proceed against them by way of "action en revendication" in the absence of all the Tickfine heirs. The Court of Civil Appeal rejected that submission, holding that an "indivisaire" could proceed against a third party by "action en revendication" without the other "co-indivisaires" being made parties to the suit. The court quoted the Cour de Cassation in France as stating, in a report in Recueil Dalloz Sirey 1991 IR 141:

> "L'action en justice (l'action en revendication) intentée par le coïndivisaire, qui avait pour objet la conservation des droits des indivisaires, entrait dans la catégorie des actes conservatoires que tout indivisaire peut accomplir seul."

Mrs Sookun-Teeluckdharry also referred to *Mazeaud, Leçons de Droit Civil*, vol 2, para 1312-1, which states:

> "Les actes de conservation des biens indivis peuvent être faits par un indivisaire agissant seul … Il peut s'agir d'actes matériels ou juridiques, ou même d'action en justice."

30. The Board accepts her submission. Mr Dulloo did not cite any contrary authority. The Board accepts the conclusion of the Court of Civil Appeal in the *Choo Ping Fen* case, which is consistent with the rule in article 813 that any "indivisaire" may take necessary measures to preserve undivided property. Further, and in any event, rule 19(1) of the Supreme Court Rules 2000 provides:

> "Any misjoinder or non-joinder of parties shall not defeat any cause of action and the court may deal with the matter in controversy so far as regards the rights and the interests of the parties actually before it."

The apparent absence of support of the co-heirs is therefore not a bar to the raising of this action.

31. Nonetheless, because it is obviously preferable for a court to determine the question of ownership of land in an action involving all of the parties who are known to have an interest in it, the Board invited Mrs Sookun-Teeluckdharry to obtain and exhibit the agreement of the appellant's siblings, Atmaram Kawal and Sita Devising Kawal, to these proceedings within seven days of the hearing. On 26 July 2019 the appellant's attorneys submitted an email purporting to be written by Atmaram Kawal and a letter purporting to be signed by Sita Devising Kawal, both of which had been provided to them by the appellant, together with a further submission by Mrs Sookun-Teeluckdharry. Since then both of the siblings have written to the Board to state that they were not aware of the legal proceedings and that they had not consented to the appellant's pursuit of the claim on their behalf. Both have denied that they sent the communications which the appellant provided to his attorneys and which purported to state their consent. It appears from other papers provided in response to the Board's request that there is a dispute between the appellant and his siblings concerning the transfers of other immovable property in 1993/1994 and 1999 by their late parents to the appellant which has resulted in separate litigation before the Supreme Court in Mauritius. That litigation is not relevant to the questions before the Board.

32. It does not appear that the appellant's siblings have any interest which is contrary to the declaration of Lekha Kawal's acquisition of ownership of the land in dispute in this litigation. They are not parties to the action and thus exposed to potential liability

in costs. There is no suggestion that they would be exposed to any liabilities resulting from their late father's ownership of bare agricultural land. The order of the Board would not prejudice their interests as it leaves open any question of the entitlement to that land as between Lekha Kawal's heirs. The Board therefore does not see the position which they have adopted as a reason for refusing the declaration which the appellant seeks.

33. The Board is grateful to the respondents' attorneys for drawing to its attention what can only be described as a dishonest attempt by the appellant to mislead the Board by the production of false documents. The Board deplores such behaviour by a litigant which may amount to a contempt of court. But, because the attempt to mislead does not affect the outcome of the appeal, the Board on this occasion proposes to take no further action in relation to what is clearly unacceptable behaviour by the appellant. Nonetheless, the appellant's actions will be a relevant consideration when the Board comes to consider submissions on costs.

Conclusion

34. The Board allows the appeal to the extent of restoring the order of Judge Angoh (a) declaring that Lekha Kawal acquired the ownership of the portion of land amounting to 37.75 perches described in the second amended plaint with summons (with the replacement of the name "Jhomun" by the name "Dhomun" or "Domun" in the description of the boundary on the fourth side) and (b) ordering the respondents to refrain from interfering with the appellant's occupation and enjoyment of the land in lite.

35. The Board invites the parties to lodge submissions as to costs, if not agreed, within 21 days of the date of this judgment.