

IN THE PRIVY COUNCIL

No. 39 of 1983

O N A P P E A LFROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

(1) DATUK JAGINDAR SINGH	<u>First Appellant</u>
(2) DATUK P. SUPPIAH	<u>Second Appellant</u>
(3) ARUL CHANDRAN	<u>Third Appellant</u>
- and -	
TARA RAJARATNAM (m.w.)	<u>Respondent</u>

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CASE FOR THE THIRD APPELLANT

RECORD

1. This is an appeal from a judgment dated pp.678-713
the 16th May 1983 of The Federal Court of
Malaysia (Lee Hun Hoe C.J. (Borneo) Salleh
Abbas C.J. (Malaysia) and Eusoffe
Abdoolcader F.J.) dismissing an appeal from
the judgments dated 17th July 1982 and the pp.381-521
21st November 1982 of the High Court of
Malaysia (Razak J.) whereby the 3rd
Appellant was, inter alios, ordered to pay
20 the Respondent the sum of \$973,000 with
interest at 6% per annum on the sum of
\$370,260 from 1975 till July 1982 and
interest at 8% per annum on the judgment pp.563-589
sum from the 21st November 1982.

2. The 3rd Appellant will rely on the
submissions and all other matters set out
in the case for the 1st and 2nd Appellants
insofar as such submissions or matters
are relevant to the 3rd Appellant's Case,
30 and, in addition will rely on the
submissions and matters hereinafter set
out.

3. This appeal raises insofar as the
3rd Appellant is concerned the following

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main issues :-

- 3.1 What was the nature of the fraud:
- a) pleaded against the 3rd Appellant by the Respondent in her Statement of Claim and Further Particulars
 - b) of which the 3rd Appellant was found guilty by (1) Razak J. and (2) The Federal Court.
- 3.2 Whether "fraud" in S.340 of the National Land Code has a wider meaning than fraudulent misrepresentation actionable at Common Law (Deceit). 10
- 3.3 Whether a claim lies against the 3rd Appellant for "fraud" within Section 340 of the National Land Code.
- 3.4 Whether there was any evidence capable of sustaining the judgments of the Courts below against the 3rd Appellant of the pleaded allegation of "fraud" either within Section 340 of the National Land Code (if relevant) or as "fraud" (fraudulent misrepresentation) actionable at common law. 20
- 3.5 Whether a person who appears on the Land Register as a registered proprietor must be deemed to be a bona fide purchaser for value.
- 3.6 Whether the Courts were right in construing from the 3rd Appellant's defence that he was claiming to be a bona fide purchaser for value. 30
- 3.7 Whether the Courts erred in directing themselves on the burden of proof and whether the Respondent had proved beyond all reasonable doubt the allegation of "fraud" against the 3rd Appellant.
- 3.8 Whether the learned judge and the Federal Courts erred in making the following findings and/or misdirected themselves :- 40
- (a) in finding as facts replies given by the 3rd Appellant to the Law Society in preference to his viva voce evidence;

- (b) in directing that it is plainly implicit that the registered owner of land can only be a bona fide purchaser for value;
- (c) in directing that the 3rd Appellant can exonerate himself only by stating that he was a bona fide purchaser for value of the land;
- (d) in directing that where the 3rd Appellant denied in toto the Respondent's allegations (including the allegation that he was not a bona fide purchaser for value), this denial implicitly meant that the 3rd Appellant was affirming the same.

3.9 Whether Razak J. and the Federal Court erred :-

- (a) by adding 140% to the value of the property without any evidence of change in value.
- (b) by awarding interest from July 1975 in addition to the increase of 140%.
- (c) failing to give credit (inter alia) to the 3rd Appellant in respect of the sums of \$110,000 and \$92,000 paid at the Respondent's direction respectively to the Hong Kong Shanghai Bank and C.K.B.

4. Salient Facts and History of Proceedings

- 4.1 The 3rd Appellant came on to the scene in July 1975 when the 1st Appellant asked him to act as a nominee or trustee. The 3rd Appellant executed Form 14A on 31st July 1975 whereby the land was transferred to him. p.209 L.15
p.250 L.19 &
25
p.328 L.21
- 4.2 On 28th January 1976 the 1st Appellant, through the firm of M/s Suppiah & Singh, applied for sub-division of the property in p.169 L.9

<u>RECORD</u>	the name of the 3rd Appellant.	
p.897	4.3 On 4th March 1976 the 1st Appellant, through the firm of M/s Suppiah & Singh acting on behalf of the 3rd Appellant, wrote to the Respondent giving notice to quit the property.	
p.1026	4.4 On 20th March 1976 proceedings were commenced in the Sessions Court of Johore in Civil Action No.146 of 1976 against the Respondent and Devan claiming possession of the land.	10
p.1032 p.1063	On 8th May 1976 the defence in the Suit was filed. On 9th August 1976 the Sessions Court in Johore ordered vacant possession.	
p.1071	4.5 On 30th August 1976 the Respondent and Devan filed Originating Motion No.17 of 1976 in the High Court of Johore praying for execution to be stayed pending Appeal. Originating Motion No.17/76 was heard by the judge of the High Court of Johore on the 6th, 8th and 9th September 1976. After hearing argument, the Motion was dismissed.	20
pp.1082-1087		
p.330 L.19	4.6 On 15th January 1977 the 3rd Appellant was informed by one of his partners in the firm of M/s Rodyk & Davidson that another partner, Coomaraswamy, had accused the 3rd Appellant of being involved in some scandalous land transaction in Johore.	30
p.333 L.2	4.7 On 30th January 1977 the 3rd Appellant met the 1st and 2nd Appellants and was briefed on the history of the land transaction and given copies of the documents including P49 and CST1 (D6).	
pp.817-830	4.8 On 3rd and 4th February 1977 at a meeting of the partners of M/s Rodyk & Davidson the 3rd Appellant handed to them copies of documents relating to the matter (including P49 and D6) and related the events.	40
pp.1198-1215 pp.1232-1239 pp.1216-1226	4.9 On 16th March 1977 Coomaraswamy and S.K. Tan lodged a complaint against the 3rd Appellant to the Law Society of Singapore. The 3rd Appellant replied on 14th April 1977.	

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	4.10 On 30th April 1977 the Respondent filed Suit No.261 of 1977 in the High Court of Johore claiming, inter alia, against the 3rd Appellant for an order that the transfer from the 2nd to the 3rd Appellant be set aside, rectification of the Register, and damages. In the Statement of Claim the Respondent averred that the 3rd Appellant "was and is still a mere nominee for the 2nd and/or 1st Appellants". On 9th March 1979 the Statement of Claim against the 3rd Appellant was struck out and on 25th April 1979 the Suit was struck off.	pp.911-920 p.919 L.32 p.938 p.941
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	4.11 The Respondent then entered Caveats against the land, as subdivided. On 22nd December 1977 the 1st Appellant, through the firm of M/s Suppiah & Singh acting on behalf of the 3rd Appellant, applied for the removal of the Caveats. On 17th April 1978 the High Court in Johore, after hearing argument, ordered the removal of the Caveats. <u>(1979) MLJ 172.</u>	pp.1102-1105 p.1135
20		
	4.12 On 16th and 30th May 1978, at the request of the 1st Appellant, the 3rd Appellant transferred the land, as sub-divided, to Jet Age Construction Co. for a consideration of \$361,113 upon which the 1st Appellant paid capital gains tax of \$46,570. The 3rd Appellant did not receive any payment for acting as a trustee or nominee of the 1st Appellant.	p.169 L.22 p.837 L.33 p.238 L.5
30		
	4.13 On 30th August 1979 the Writ and Statement of Claim in this Suit was filed claiming against the 3rd Appellant (inter alia)	pp. 1-20
40		
	(i) that the transfer and registration of the property into the name of the 3rd Appellant was procured and effected fraudulently;	p.13 Ll.2-6
	(ii) damages for loss and damage resulting from the said..... fraud.	p.20 Ll.9-14
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- 4.14 On 17th July 1982 Razak J. gave judgment for the Respondent on liability against, inter alios, the 3rd Appellant and committed him to a term of imprisonment of 2 years for contempt of Court.
- 4.15 On 24th September 1982 the Federal Court of Malaysia allowed the 3rd Appellant's appeal against his committal and set aside the Order for contempt of Court. (1983 1 MLJ.71) 10
- 4.16 On 21st November 1982 Razak J. gave judgment on damages against, inter alios, the 3rd Appellant for deceit/fraud.
- 4.17 On 16th May 1983 the Federal Court of Malaysia dismissed the 3rd Appellant's appeal against liability and damages. 20
- 4.18 On 15th August 1983 the Federal Court of Malaysia granted the 3rd Appellant leave to appeal to His Majesty the Yang Di-Pertuan Agong.

CASE FOR THE THIRD APPELLANT

5. Issue 3.1

What was the nature of the fraud:
a) pleaded against the 3rd Appellant
by the Respondent in her Statement
of Claim and Further Particulars
b) of which the 3rd Appellant was
found guilty by (1) Razak J. and
(2) The Federal Court. 30

"fraud must be distinctly
alleged and as distinctly
proved"

per Thesiger LJ in Davy v
Garrett Vol.VII 1878 CH 473
at 489

A Statement of Claim must state 40
specifically the relief or remedy
which the Plaintiff Claims

O 18 Rule 15(1) of the Rules
of the Supreme Court

As to a)

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Under Paragraph 12 of the Statement of Claim "Particulars of the Fraud of the 3rd Defendant" the Respondent alleged that the 3rd Appellant had been "colluding" with the 1st and 2nd Appellants and causing her property to be registered into the 3rd Appellant's name with knowledge:-

- 10 (a) of the arrangement between the Respondent and the 1st and 2nd Appellants
- (b) that he was not a bona fide purchaser of the said property for value
- 20 (c) that he was accepting the transfer of the said property into his name only as a nominee or agent of the 1st and 2nd Appellants and with the purpose of pretending to be a bona fide purchaser for value so as to try and defeat the Respondent's right to recover her property.

30 Notwithstanding the word "colluding" it was never part of the Respondent's case (pleaded or otherwise) that the 3rd Appellant was a party to a fraudulent conspiracy to injure the Respondent. When asked for Further Particulars of "colluding" the Respondent did not plead or allege any agreement to defraud and injure the Respondent but merely pleaded a "getting together". Further in the Prayer of the Statement of Claim the Respondent did not claim damages for conspiracy to defraud and injure the Respondent as would have been necessary

40 to comply with O 18 rule 15(1) of the Rules of the Supreme Court.

Nor did the Respondent ever plead or aver that the 3rd Appellant was guilty of fraud as a constructive trustee. Such an averment and the remedy or relief following therefrom would have had to have been specifically pleaded.

50 See Goff LJ in Belmont Finance Corporation v Williams Furniture Ltd. 1979 AC 118 at 136:

O 18 rule 15(1) of the
Rules of the Supreme Court.

Nor did the Respondent ever allege fraudulent misrepresentation (Deceit) against the 3rd Appellant. This would have entailed pleading a misrepresentation of fact made by the 3rd Appellant to the Respondent with the intention of inducing her to act upon it, and which did induce the Respondent to act upon such misrepresentation to her detriment 10

See Diplock LJ in Barclay's Bank v
Cole 1967 2 QB 734 at 745

Not only was fraudulent misrepresentation not pleaded against the 3rd Appellant because there was no evidence of any such said misrepresentation, but, before the Federal Court, Counsel for the Respondent stated that he was not relying upon Common Law fraud but rather on "actual fraud" as laid down under S.340 of the National Land Code. 20

Nor did the Statement of Claim ever specifically plead "actual fraud" under S.340 of the National Land Code; further in the Prayer the Respondent did not claim relief or a remedy in respect thereof, but merely claimed against the 3rd Appellant "damages..... for all loss and damage to the Plaintiff resulting from the.....fraud". 30

In the premises the 3rd Appellant contends that in the Statement of Claim the fraud pleaded against her by the Respondent was not "distinctly alleged" nor did the Statement of Claim "state specifically the relief or remedy claimed".

As to (b)

(1) Razak J. found : 40

- (a) The very fact that the 1st Appellant told the 3rd Appellant that he wanted the 3rd Appellant to sub-divide and develop the land when he could have done so himself should have been sufficient to arouse suspicion in the 3rd Appellant's mind so as to put himself on enquiry.

- (b) The 3rd Appellant abstained from making further enquiries for fear of learning the truth about the 1st Appellant's fraud or, because he already knew and therefore fraud must be properly ascribed to him.

10 It is not clear from Razak J's judgment (on liability) what the nature of the fraud was that "must be properly ascribed to him" (the 3rd Appellant). When giving judgment on damages Razak J. found that the 1st, 2nd and 3rd Appellants were jointly and severally liable for the Common Law tort of deceit. So far as the 3rd Appellant is concerned this finding cannot be right. The essential element of the tort of deceit is a
20 fraudulent misrepresentation made to someone who has acted thereon to his or her detriment. It was never part of the Respondent's case against the 3rd Appellant that he was guilty of Common Law fraudulent misrepresentation as was made clear to the Federal Court by the Respondent's Counsel.

30 This illustrates the error into which Razak J. fell namely not to consider separately the Respondent's case against the 3rd Appellant from the Respondent's case against the 1st and 2nd Appellants.

(2) The Federal Court found :

- (a) That the 1st Appellant must have known what was going on since he claimed himself to be the registered proprietor and denied that he was a nominee.
- (b) That the 3rd Appellant impliedly claimed to be a bona fide purchaser for value.
- 40 (c) That the 3rd Appellant colluded with the other Appellants to get possession of the property.
- (d) That on the facts they had "no reason to interfere with the findings of the learned Judge on fraud" ...

Again, it is not easy to see exactly what was the nature of the fraud found by the Federal Court. It is unlikely that they were finding that the 3rd Appellant was guilty of a fraudulent misrepresentation

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i.e., Deceit, in view of the statement by Counsel for the Respondent that he was not relying on Common Law fraud. It is more likely that the Federal Court were assuming that Razak J. had found the 3rd Appellant guilty of fraud within the meaning of S.340 of the National Land Code and saw no reason to interfere with such a finding.

6. Issue 3.2

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Whether "fraud" in S.340 of the National Land Code has a wider meaning than fraudulent misrepresentation actionable at Common Law (Deceit)

The National Land Code does not define "fraud". In the absence of any such statutory definition it is submitted that "fraud" means a Common Law fraudulent misrepresentation.

See Lord Denning at p.743 and Lord Diplock at p.744 in Barclays Bank Ltd v Cole (supra)

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The words of S.340 of the National Land Code are "fraud" or "misrepresentation". Clearly the draftsmen of the Code were considering that "misrepresentation" was something different from "fraud". If the Common Law definition of "fraud" is taken then S.340 would cover fraudulent misrepresentations and non-fraudulent misrepresentations i.e., innocent misrepresentations. It is therefore submitted that "fraud" in S.340 of the National Land Code has no wider meaning than at Common Law.

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7. Issue 3.3

Whether a claim lies against the 3rd Appellant for "fraud" within Section 340 of the National Land Code.

7.1 If "fraud" within S.340 of the National Land Code means Common Law fraudulent misrepresentation then no claim lies against the 3rd Appellant. If "fraud" under S.340 has a wider meaning than Common Law fraudulent misrepresentation, and, if (which is denied) the 3rd Appellant's acts amounted to such fraud under S.340, the 3rd Appellant submits that on the proper construction of the

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10 National Land Code, "fraud" in S.340 gives no right to a civil claim for damages. The object or purpose of S.340 is to confer indefeasable title or interest to the registered proprietor of land save in the case of "fraud" or misrepresentation to which the person..."was a party"... In such cases the title or interest in the hands of third parties to whom it may have been transferred may be liable in certain circumstances to be set aside, followed presumably by a rectification of the Register. The remedy provided by S.340 in the case of fraud is the possibility in certain

20 circumstances of setting aside the said title or interest of the person guilty of such fraud. The 3rd Appellant will contend that S.340 creates no right to civil damages, and that a claim to damages for fraud can only lie under the Common Law namely for fraudulent misrepresentation.

30 7.2 At the date this suit was filed in 1979 even if (which is denied) the 3rd Appellant had been guilty of "fraud" within the meaning of S.340 of the National Land Code, no additional cause of action would have vested in the Respondent, in that the land, no longer being in its original state, the title therein could no longer be registered in the Respondent's name.

8. Issue 3.4

40 Whether there was any evidence capable of sustaining the judgments of the Courts below against the 3rd Appellant of the pleaded allegation of "fraud" either within Section 340 of the National Land Code or as "fraud" (fraudulent misrepresentation) actionable at Common Law.

50 8.1 The only finding of fraud against the 3rd Appellant was the learned judge's finding that the 3rd Appellant "accepted the (1st Appellant's) word without more and clearly abstained from making further enquiry for fear

p.495 L.28
p.496 L1.1-3

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of learning the truth about the 1st Appellant's fraud or, because he already knew, and therefore fraud must be properly ascribed to him".

8.2 No direct evidence of such fraud by the 3rd Appellant was given by the Respondent or any of her witnesses. Her whole case against the 3rd Appellant rested on inferences to be drawn from the following facts :- 10

- (a) The 3rd Appellant was a close friend of the 1st Appellant;
- (b) The 3rd Appellant agreed to become the 1st Appellant's trustee or nominee and have the land registered in his name;
- (c) The 3rd Appellant made no enquiries prior to :
 - (1) agreeing to have the land registered in his name; 20
 - (2) bringing proceedings for possession against the Respondent and her husband;
- (d) The 3rd Appellant did not inform the Courts that heard the various proceedings prior to this suit, that he was not a bona fide purchaser for value and did not inform Razak J. of this fact until part way through the trial of this suit; 30
- (e) Though in February 1977 the 3rd Appellant orally informed his Partners and the Singapore Law Society that he held the land as a trustee or nominee, he failed to do so in his written Replies to the Singapore Law Society and failed to inform his partners of the identity of the beneficiary of the Trust. 40

Though these facts could (though not necessarily should) give rise to the inferences that the 3rd Appellant was too trusting of the 1st Appellant, was careless, stubborn or even lacking in candour in not volunteering earlier that he was not a bona fide purchaser for

value, nevertheless, it is contended that these facts do not give rise to the irresistible inference that the 3rd Appellant was guilty of fraud.

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- 10 8.3 In making the findings of fraud Razak J. drew inferences that could not properly be drawn and wholly ignored the contemporaneous documents and the evidence of the 1st and 3rd Appellants. p.250 L1.20-24
p.251 L1.16-25
p.328 L.25
p.251 L1.1-4
- 8.4 In Malaysia fraud must be proved beyond reasonable doubt. Saminathan vs. Pappa (1981) 1 MLJ 21. The Federal Court did not support Razak J's finding as such but upheld it on the ground that "we have no reason to interfere with the findings of the learned judge on fraud". Such a finding was wrong.
- 20 9. Issue 3.5
- Whether a person who appears on the Land Register as a registered proprietor must be deemed to be a bona fide purchaser for value.
- 9.1 The findings of the learned judge that a person may not become a registered owner without having been first a bona fide purchaser for value is wrong in law. p.480 L1.1-6
- 30 10. Issue 3.6
- Whether the Courts were right in construing from the 3rd Appellant's defence that he was claiming to be a bona fide purchaser for value.
- 40 10.1 In paragraph 12 of the Statement of Claim the Respondent had alleged, inter alia, that the 3rd Appellant had accepted the transfer of the property into his name only as nominee or as agent "only for the purposes of posing and projecting himself as a bona fide purchaser for value". By paragraph 22 of the original defence the 3rd Appellant repeated paragraphs 3 and 9 of the defence and denied each and every allegation contained in paragraph 12 of the Statement of Claim, including the allegations of fraud and put the p.17
p.45

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p.478 L.5

p.692 L.20

p.224 L.23

p.335 L.25

Respondent to strict proof thereof. The learned judge held that such a traverse meant that the (3rd Appellant) was alleging that he was a bona fide purchaser for value. The Federal Courts upheld the learned judge's finding that the 3rd Appellant had claimed to be a bona fide purchaser for value ignoring the documentary and viva voce evidence of the witnesses and in particular the evidence of the 3rd Appellant. The findings of both Courts were wrong and contrary to the rules of pleading. 10

11. Issue 3.7

Whether the Courts erred in directing themselves on the burden of proof and whether the Respondent had proved beyond reasonable doubt the allegation of "fraud" against the 3rd Appellant. 20

pp.16-17

11.1 The Respondent and her witnesses in evidence had made no allegation against the 3rd Appellant and did not substantiate the allegations of fraud as pleaded. In considering the evidence that was adduced against the 3rd Appellant both Courts failed to direct themselves on the burden of proof and in particular whether the Respondent had proved her case against the 3rd Appellant beyond reasonable doubt. In this both Courts were wrong. Further both Courts failed to consider the Respondent's case against the 3rd Appellant separately and distinctly from her case against the 1st and 2nd Appellants. 30

12. Issue 3.8

Whether the learned judge and the Federal Court erred in making the following findings and/or misdirected themselves. 40

(a) in finding as facts replies given by the 3rd Appellant to the Law Society in preference to his viva voce evidence.

pp.488-491

In making his findings of facts Razak J. referred to the reply of the 3rd Appellant to the Law Society of Singapore. Having set out the answers to several questions he then totally ignored the viva voce evidence of

the 3rd Appellant and wrongly came to the conclusion that the 3rd Appellant had "time and again said that he was a bona fide purchaser for value of the land".

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p.491 L.27

10 When the 3rd Appellant first applied for the admission of the said answers (D32), it was rejected by the learned judge as irrelevant. On an application being made a second time for its admission, the Respondent's Counsel agreed to the admission of the answers "only for the purpose of showing the (3rd Appellant's) consistency"; and the answers were admitted in evidence only for that purpose. Razak J. was wrong in accepting the answers of the 3rd Appellant written in 1977 to the Law Society in preference to his viva voce evidence, tested by cross-examination, at the hearing in 1981.

20 (b) The direction of Razak J., upheld by the Federal Courts, that it is plainly implicit that a registered owner of land can only be a bona fide purchaser for value.

The 3rd Appellant will contend that under the National Land Code the registered owner of the land is not always a bona fide purchaser for value.

30 (c) The direction by Razak J. that the 3rd Appellant can exonerate himself only by stating that he was a bona fide purchaser for value:

The 3rd Appellant will contend that this amounted to a misdirection in that he totally ignored the fact that it was for the Respondent to prove fraud against the 3rd Appellant.

40 (d) The direction of Razak J. that where the 3rd Appellant denied in toto the Respondent's allegations (including the allegation that he was not a bona fide purchaser for value), this denial implicitly meant that the 3rd Appellant was affirming that he was a bona fide purchaser for value.

p.484 L.20

The 3rd Appellant contends that Razak J.

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misdirected himself. However, even if he was technically right this is a pure "pleading" point and not the sort of evidence on which someone should be found guilty of fraud.

13. Issue 3.9

Whether Razak J. and the Federal Court erred :-

- (a) by adding 140% to the value of the property without any evidence in change of value; 10
- (b) by awarding interest from July 1975 in addition to the increase of 140%;
- (c) by failing to give credit (inter alia) to the 3rd Appellant in respect of sums of \$110,000 and \$92,000 paid at the Respondent's directions respectively to the Hong Kong Shanghai Bank and CKB. 20

As to (a)

There was no evidence before Razak J. in this suit to support his finding that "the normal annual rate of increase of land prices has always been generally about 20% a year ... There would thus be an increase of 140% over the years from 1975-1982 to the value of the land."

As to (b)

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It is conceded that normally the Respondent would be entitled to interest on the damages to compensate her for being kept out of her monies between 1975 and the date of judgment. However, Razak J. having already compensated her by increasing her damages by 140% to cover the 1975-1981 period, was wrong to award her in addition interest at 6% on \$370,260, which said sum represented the value of her property in 1975.

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As to (c)

On the Respondent's own evidence she wished to borrow \$220,000, \$110,000

of which she wished to be paid to the Hong Kong and Shanghai Bank in discharge of her brother-in-law Dr. Das's loan with that Bank. The remaining \$110,000 was to be paid to CKB to discharge her own overdraft at that Bank.

In fact the 1st Appellant paid :

- 10 (1) the Hong Kong and Shanghai Bank \$120,000 to discharge the guarantee that he had given to that Bank for Dr. Das's loan of \$110,000; and
- (2) CKB \$92,000 to discharge the Respondent's overdraft with that Bank.

20 The Respondent therefore attained the benefits of (1) the discharge of Dr. Das's loan of \$110,000 and (2) the discharge of her own overdraft of \$92,000.

The 3rd Appellant will contend that the damage (if any) to which the Respondent is entitled must be diminished by the sums of \$110,000 and \$92,000 respectively.

30 14. The 3rd Appellant submits that the judgments of the Federal Courts and of Mr. Justice Razak were wrong and ought to be reversed in respect of liability and quantum and this Appeal be allowed with costs, for the following amongst other

R E A S O N S

1. BECAUSE Section 340 of the National Land Code does not create a right to damages for fraud or misrepresentation;
- 40 2. BECAUSE the Courts below were wrong in inferring that because the 3rd Appellant failed to make further enquiry as to the reason the 1st Appellant wanted him to be his trustee, fraud must be ascribed to him, or that fraud should be ascribed to him for any other reason.
3. BECAUSE no sum should be added to the market value to reflect any change

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in value up to the date of judgment,
and no sum can be added in the absence
of any evidence of increased value;

4. BECAUSE credit should be given for
the sum of \$212,000 paid by the 1st
Appellant;
5. BECAUSE the judgments of the Federal
Court and Razak J. were wrong.

COLIN ROSS-MUNRO Q.C.

RONALD KHOO

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No. 39 of 1983

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

(1) DATUK JAGINDAR
SINGH First Appellant
(2) DATUK P. SUPPIAH Second Appellant
(3) ARUL CHANDRAN Third Appellant
- and -
TARA RAJARATNAM
(m.w.) Respondent

CASE FOR THE THIRD APPELLANT

BARTLETTS DE REYA,
199 Piccadilly,
London W1V 0AT.

Solicitors for the Third Appellant