

**NANDALALL RAMBIRICHE V. AMBOUTIE PERSAUD  
And ANUPCHAND HARIPAL**

**[COURT OF APPEAL OF GUYANA (Bernard, C., N. Kissoon and I. Chang, JJ.A)  
November 7, 15; December 14, 2001; February 11, 2002]**

**Contract- Agreement of sale of Immovable property pending execution of a formal agreement of purchase and sale at mutually agreed terms- Whether agreement valid.**

**Contract- Illegality- Purchase price payable in US currency- Whether contract illegal or void for non-compliance with Statute- Exchange Control Act, Cap 86:01- Bank of Guyana Act, Cap 85:02 s.21 as amended, [G].**

**Landlord and Tenant- Order for possession- Whether application to the High Court permissible- Rent Restriction Act, Cap 36:23 s.26(1) [G].**

**In February 1990 the Appellant went into occupation of premises situate at Lot 5-7 Lombard Street, Georgetown pursuant to an oral agreement of tenancy coupled with an oral option to purchase the said property.**

**On 9<sup>th</sup> November 1992 the Appellant paid to the Respondents the sum of US\$10,000.00 as a deposit on an agreed purchase price of US\$100,000.00 for the said property and a receipt was issued which stated that the amount was paid "pending execution of agreement of purchase and sale thereof at mutually agreed terms." On 10<sup>th</sup> December 1993 the Respondents instituted proceedings against the Appellant seeking a declaration that the oral agreement entered into between them was null and void, alternatively, rescission of the agreement, damages for breach of contract and possession of the premises. The Appellant counterclaimed for specific performance of the said agreement of sale, alternatively, a declaration that he is entitled to remain in the property by reason of promissory and / or proprietary estoppel.**

**The trial judge rescinded the agreement and ordered the Appellant to deliver possession of the premises to the respondents.**

**The appellant appealed contending that the trial judge was wrong when she held that the evidence did not disclose a binding contract between the parties for the sale of the said property.**

**HELD,**

- (i) there was no valid agreement of sale and purchase of the said property;**
- (ii) in the particular circumstances of this case, the High Court had no jurisdiction to make an order for possession; accordingly, the order for possession is set aside.**

**Cases referred to in the judgment:**

**Branca v. Cobarro [1947] 2 All E. R. 101  
Riley et anor v. Troll [1953] 1 All E. R. 966  
Scammell v. Ouston [1941] 1 All E.R. 14  
Ambrose v. Boston (1993) 55 WIR 184  
Johnson v. Agnew [1979] 1 All E. R. 883**

**O. Valz, S.C. for the Appellant  
C. Ramson, S.C. and J. Persaud for the Respondents.**

**BERNARD, C. delivered the judgment of the Court.**

**IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE**

**APPELLATE JURISDICTION**

**G U Y A N A**

**CIVIL APPEAL NO. 22 OF 1997**

**BETWEEN:**

**NANDALALL RAMBIRICHE**

**Appellant/Defendant**

**- and -**

- 1. AMBOWTIE PERSAUD**
- 2. ANUPCHAND HARIPAL**

**Respondents/Plaintiffs**

**BEFORE:**

<b>Hon. Madame Justice Desiree P. Bernard</b>	<b>-</b>	<b>Chancellor</b>
<b>Hon. Mr. Justice Nandram Kissoon</b>	<b>-</b>	<b>Justice of Appeal</b>
<b>Hon. Mr. Justice Ian Chang</b>	<b>-</b>	<b>Justice of Appeal</b>

Mr. O. Valz, SC for Appellant  
Mr. C. Ramson, SC for Respondents

**2001:** November, 7, 15  
December, 14

**2002:** February, 11

**J U D G M E N T**

**BERNARD, C.:**

In February, 1990 the Appellant went into occupation of premises situate at lots 5-7 Lombard Street, Georgetown as the tenant of the Respondents with an oral option to purchase it later.

On 9<sup>th</sup> November, 1992 the Appellant paid to the Respondents the sum of \$10,000 US as a deposit on an agreed purchase price of \$100,000 US

for the said property and a receipt was issued which stated that the amount was paid "pending execution of agreement of purchase and sale thereof at mutually agreed terms".

Relations between the parties deteriorated over the years, and on 10<sup>th</sup> December, 1993 the Respondents instituted proceedings against the Appellant seeking a declaration that the oral agreement entered into between them was null and void, alternatively, rescission of the agreement, damages for breach of contract and for waste, and possession of the premises.

After a hearing the learned trial judge rescinded the agreement and ordered the Appellant to deliver possession of the premises to the Respondents on or before 1<sup>st</sup> October, 1997. The Appellant has appealed to this Court against those orders.

At the hearing of the appeal this Court having examined the legal issues which fell to be determined invited both Counsel for the Appellant and the Respondents to consider arguments on the issue of illegality in the light of the fact that the deposit and the purchase price were payable in US currency ostensibly in contravention of the Bank of Guyana Act, Cap. 85:02 and the Exchange Control Act, Cap. 86:01.

Before embarking on a discussion of the issue of illegality, I shall first deal with the question of whether there was a valid agreement for the sale of the property in question. Counsel for the Appellant indicated that the agreement was contained in the receipt (Ex. H) issued on 9<sup>th</sup> November, 1992 to which I alluded at the beginning of the judgment. Since this is relied on as the basis of the contract and much turns on its wording I shall set it out verbatim. It is to this effect:

“ 9<sup>th</sup> November, 1992

Received from Nandalall Rambiriche the sum of Ten Thousand US Dollars (US\$10,000) being a deposit on purchase price of US \$100,000 of property situate at 5 Lombard Street, Georgetown – pending execution of agreement of purchase and sale thereof at mutually agreed terms.

A. Persaud  
A. Haripal”

**Section 3(d) (iv) of the Civil Law of Guyana Act, Cap. 6:01**

provides that no action shall be brought to charge anyone upon any contract or agreement for the sale of immovable property unless the agreement or some memorandum or note thereof is in writing and signed by the party to be charged. On the face of it it seems as if the above receipt satisfies the criteria in that it is in writing and is signed by the parties on a purchase price for immovable property described in the document.

However, on closer scrutiny the document indicates that the deposit was made “pending execution of an agreement of purchase and sale at mutually agreed terms”. This indicates that the parties intended to have a proper agreement executed in terms on which they had mutually agreed. The question arises as to whether the parties intended immediately upon issuance of the receipt to have effected a sale of the property or intended to await the execution of a proper agreement with mutually agreed terms.

Counsel for the Appellant made reference to the case of **Branca –v- Cobarro (1947) 2 AER, 101** where an agreement which concluded with the words “this is a provisional agreement until a fully legalised agreement drawn up by a solicitor and embodying all the conditions herewith stated is signed” was held to imply by the use of the words “until “ and “provisional” that the agreement was intended to be immediately fully binding and to

