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IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 48 of 1982

Between:

CHIMAN LAL  
s/o Vallabh Dass

Appellant

and

PAN BAI  
d/o Bhowan Kara

Respondent

K.C. Ramrakha and A.K. Singh for the Appellant  
Ashik Ali for the Respondent

Date of Hearing: 10th March, 1983  
Delivery of Judgment: 10th March, 1983

JUDGMENT OF THE COURT

Gould V.P. (Orally)

This is an appeal from the Supreme Court on the refusal of an application to rescind a Maintenance Order and for a further alternative order for maintenance. The position is that after considerable litigation the Resident Magistrate at Labasa was asked by the respondent to this appeal to vary an existing Maintenance Order made in the Magistrate's Court.

Evidence was taken in those proceedings and was in fact virtually complete when the appellant brought an appeal to the Supreme Court challenging the jurisdiction of the Magistrate's Court and on that appeal being dismissed

he brought a second appeal to this Court. That appeal was also dismissed and the order made by the Supreme Court was maintained. That order was that the Magistrate at Labasa continue and complete the hearing of the respondent's application for variation of the Maintenance Order at Labasa.

As we have mentioned, those proceedings in the Labasa Court were virtually complete but instead of complying with the orders of this Court and the Supreme Court, the appellant brought these further proceedings to the Supreme Court asking for the orders we have mentioned above. This application was dismissed and the present appeal has now been brought.

We think that the appeal is completely misconceived and justifies further the allegations of delay which have already been levelled at the appellant in previous proceedings. He has referred to a desire to finalize the matter of maintenance by a lump sum settlement and also to an unsubstantiated allegation of bias on the part of the Magistrate at Labasa. We agree entirely with the learned Judge in the Supreme Court that the suggestion of bias put forward in the way it was is completely irrelevant to the present proceedings. As to the reference to the lump sum settlement it is one which the appellant could have made prior to the Labasa proceedings on an application to remove to the Supreme Court, instead of which he submitted to the jurisdiction of the Magistrate, and both the Supreme Court and the Court of Appeal have ordered that those proceedings be completed. Until that order is complied with there is no basis for asking the Supreme Court to consider a further application. The whole matter is already under the order of the Supreme Court.

If after the Labasa Court has given its decision the appellant wishes to place further evidence before the Court he could appeal again on the completion of those proceedings or make such further application as he may be advised.

The appeal is dismissed with costs.



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Vice President



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Judge of Appeal