

IN THE FIJI COURT OF APPEAL

CIVIL APPEAL NO. 76 OF 1985

Between:

- 1. LAKSHMI PRASAD PANDEY  
s/o Ram Narayan
  - 2. NAIPAL s/o Sampat
- Appellants

- and -

NAREND SINGH

Respondent

Mr. G.P. Mishra and Mr. V.M. Mishra  
for the Appellants

Dr. ~~MS.~~ Sahu Khan for the Respondent

Date of Hearing: 18th March, 1986

Delivery of Judgment: 21st March, 1986

JUDGMENT OF THE COURT

Kermode, J.A.

This is an appeal against the decision of Dyke, J. in Civil Action No. 353 of 1985 dismissing an application by the appellants, the plaintiffs in the action, for an interlocutory injunction against the respondent, the defendant in that action.

Not less than 9 grounds of appeal were raised by the appellants but most of them would require consideration of the merits of the appellants' claim in their action with which this Court is not concerned in this appeal.

The appellants' real complaint is that the learned Judge in dismissing the application failed to properly consider the principles involved in granting interlocutory injunctions.

That complaint was not clearly stated in any one of the grounds of appeal but can be gathered from references in several of the grounds to recognized principles governing such grants such as a serious question to be tried, adequacy of damages as a remedy and the balance of convenience.

We therefore do not specifically set out the appellants' grounds of appeal. Dr. Sahu Khan was in no way misled by the manner in which the grounds were framed.

The facts in the case can be shortly stated.

The appellants sought an interlocutory injunction to restrain the respondent from interfering with the use by them and the public of part of a road claimed to have been used by the public for many years. The part in dispute is a deviation that had been formed in 1976 over land held by the respondent as lessee of the Native Land Trust Board. The lessee prior to the respondent, one Hari Prasad, had given written authority to construct the deviation. In 1983 he sold his interest in the leasehold to the respondent.

The respondent, after having permitted the public to use the deviation for about two years effectively blocked the road where it crossed his land.

Dyke J. had to consider a number of conflicting affidavits which went into the merits of the case.

He fully considered those affidavits and after adverting to the conflicting evidence, expressed his concern with the fact that the affidavits revealed a transaction between Hari Prasad and the first appellant in connection with the deviation which appeared to him to raise the issue of the legality of the transaction in that it contravened Section 12 of the Native Land Trust Act.

It is not necessary to set out the terms of Section 12. The learned Judge clearly considered that illegality might become an issue in the action and this consideration may well have played some part in his consideration of the application.

While it was not necessary for the appellants to establish a prima facie case the learned Judge had to be reasonably satisfied that a similar injunction sought in the action would probably be granted.

The principles governing grants of interlocutory injunctions were laid down in AMERICAN CYANAMID CO. v. ETHICON LTD. (1975) 1 All E.R. 505.

Lord Diplock at p. 509 stated the object of the interlocutory injunction - He said :-

"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where 'the balance of convenience' lies."

He went on at p. 510 to refer to balance of convenience in the following statement :-

"So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at the stage."

There being no suggestion that damages would be an adequate remedy for the plaintiffs the learned Judge considered the balance of convenience. He pointed to the fact that there was an alternative road. The reference to the alternative road was brief being followed by his statement dismissing the application with costs, but it was, nonetheless an important factor. Although the trial Judge did not refer to it, there is the further circumstance that the deviation has been closed off now for the better part of a year.

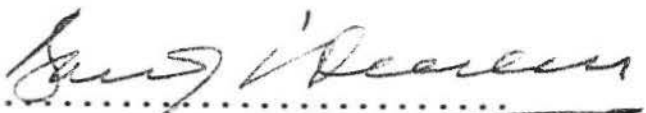
There is however a further aspect and that is that the learned Judge had a discretion whether to grant or refuse the application.


It has not been shown to us that he erred in exercising that discretion.

The inconvenience which the appellants allege is being suffered by the public can be mitigated to some extent by seeking an order for speedy trial of the action.

The appeal is dismissed with costs to the respondent to be paid by the first appellant. In view of the second appellant's denial on oath that he authorised the action being brought in his name, we have excluded him from the order as to costs.

  
.....  
Judge of Appeal

  
.....  
Judge of Appeal

  
.....  
Judge of Appeal