

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0034/94S

(Lautoka High Court Civil Action No. HBC0033/94L)

BETWEEN:

- 1) SHAILENDRA SINGH
- 2) LALITA SINGH

Appellants/Applicants

and

VEER BHADRA

Respondent

*Mr S. Parshotam* for the Appellants/Applicants  
*Ms V. Narayan* for the Respondent

Dates & Place of Hearing: 1 July 1994, 21 September 1994,  
31 October 1994, Suva  
Delivery of Decision : 30 May 1995

**DECISION**

(Chamber application for a stay of injunction)

On 11 February 1994 the Respondent issued a writ in the High Court at Lautoka seeking, inter alia, (a) cancellation of transfer of Housing Authority Sublease No. 179831 from the

Respondent to the Appellants on the ground that such transfer was obtained by fraud, (b) an injunction restraining the Appellants from interfering with his peaceful use and occupation of the said property pending determination of the Action.

On 14 February 1995 Sadal J. granted an ex-parte motion for an interim injunction against the Appellants restraining them from interfering with the Respondent's peaceful and quiet enjoyment of the property in question until 25 March 1995.

On 17 March 1994 the Appellants applied to the Judge in Chambers for the dissolution of the interim injunction.

On 25 March 1994 the learned Judge extended the interim injunction until further order of the Court.

In addition to affidavits filed for and against the application for dissolution, Counsel for both sides submitted extensive written submissions to the learned Judge.

On 22 July 1994 Sadal J. refused the application for dissolution and gave his ruling in the following terms:

" I have considered the affidavits filed by both sides. Although the property in question has been registered in 1st & 2nd defendants' name there is strong allegation of fraud. This issue must be tried. In these circumstances I am not prepared to dissolve the injunction.

However I do make an order that there be a speedy trial of this action.

Costs in the cause."

On 23 August 1994 the Appellants filed a Notice of Appeal in the Court of Appeal seeking an Order that the interim injunction be dissolved and that the Respondent be ordered to give vacant possession of the Housing Authority leasehold property currently occupied by him.

On the same date the Appellants filed a motion before a single Judge seeking the following orders:

"that the Ex-parte Injunction granted to the Respondent (Original Plaintiff) by the Honourable Mr. Justice S.N. Sadal on the 14th day of February, 1994 be dissolved.

That the Respondent be ordered to give vacant possession to the Appellants of the premises situated on Housing Authority Lease Number 179831 being Lot 11 on DP 4736.

.... "

When the matter came before me in Chambers on 1 September 1994 for hearing I pointed out that the motion is seeking from me the very orders that the Appellants are seeking from the Court of Appeal and that a single Judge cannot adjudicate on the decisions involved in the appeal.

On 7 September the Appellants filed an amended motion seeking the following Order:

- "A. That the Injunction Order made by the Honourable Mr Justice Sadal in favour of the Respondent in Civil Action No. 33 of 1994 in the High Court of Fiji at Lautoka on 22 July 1994 be stayed pending determination of the Appeal filed by the Appellants in this Honourable Court on 8 August 1994.
- B. That, in the alternative, the Respondent be ordered to pay into Court the sum of \$5,397.75 and deposit the sum of \$120.00 per month until further order."

Counsel for both sides have made written submissions and have asked that I give my decision on the basis of the written submissions and the affidavits filed.

A single Judge's power to deal with an application of the present nature arises from the provisions of Section 20 of the Court of Appeal Act the relevant parts of which read as follows:

"20. ....

- (f) to stay execution or make any interim order to prevent prejudice to the claims of any party pending an appeal;
- (g) generally, to hear any application, make any order, or give any direction incidental to an appeal or intended appeal, not involving the decision of the appeal,"

Counsel for Respondent has submitted that since a speedy trial has been ordered, resolution of the basic issue before the High Court would obviate the necessity of a single Judge of the Court of Appeal to rule on this interlocutory application. He informed the Court that he has already made approaches to the Deputy Registrar at Lautoka for an early hearing date.

Counsel for the Appellants has rightly pointed out that Lautoka is currently one Judge short and that there is a hearing backlog there. In the circumstances I feel it my duty to give a ruling.

The Respondent, who is the previous registered proprietor, is still occupying the house in question and has resisted the Appellants' efforts to evict him.

The Appellants contend that as registered proprietors of the leasehold property their right to possession and occupation should be given effect to under the provisions of the Land Transfer Act Cap 131 in particular Sections 38 and 39. Furthermore, the full purchase price of \$7000 has been paid, i.e. \$5397.75 by payment of Respondent's debts to 3rd parties and the balance of \$1602.25 remains uncollected in the

Trust Account of Messrs Maharaj & Associates who acted for both parties to the alleged sale transaction. It is also contended by the Appellants that the Respondent's undertaking to pay damages is meaningless having regard to his means. The Appellants ask that if the injunction is not stayed then the Respondent should deposit in Court the sum of \$5397.75 and also pay mesne profits into Court to abide the outcome of the Civil Action in the High Court.

The Respondent resists the making of any orders and has drawn my attention to Section 42(1)(c) of the Land Transfer Act which gives a previous registered proprietor a right of action against a new registered proprietor where it is alleged that the transfer was obtained by fraud.

The particulars of fraud have been given in the statement of claim. The Respondent also points out that the 1st Appellant was an officer in the employ of the Housing Authority from which prior consent was necessary before any sale can be effected. Apart from contending that his signatures were obtained by trick the Respondent is also alleging that the property in question is worth \$20,000. Whilst I am not dealing with the motion before me in my appellate capacity I am of the view that the learned trial

Judge had sufficient material before him to order an interim injunction namely -

- (a) prima facie, a good cause of action,
- (b) a serious question for trial and
- (c) an obvious need to maintain the status quo at least for a short period.

There is insufficient new material before me to grant an unconditional stay of the injunction. The practical effect of an unconditional stay on the facts of the present case will be tantamount to immediately dissolving the injunction thus rendering the appeal unnecessary. On the other hand the prolonged delay in the hearing of the appeal or the Action is likely to operate unfairly on the Appellants should the Respondent not succeed in setting aside the transfer having regard to his means. I, therefore, feel that there is merit in granting a conditional stay to, achieve a balance of convenience and to do justice between the parties in the hope that there will be a speedy trial in the interim period.

I, therefore, order as follows:

- ( i) that the interim injunction ordered by the High Court shall continue in force provided the Respondent pays into the High Court the sum of \$5,397.75 on or before 3 July 1995;

- ( ii) that the said sum to remain in Court (or in an interest bearing account) until the decision of the Court of Appeal or the decision of the High Court in Civil Action No. HEC0033/94L whichever is the first;
- (iii) that if the Respondent fails to pay the said sum into Court as ordered, the High Court's injunction shall be stayed until the decision of the High Court or of the Court of Appeal whichever is delivered first;
- ( iv) that the said sum if deposited in Court as ordered shall be paid out in due course (with interest if any) as per direction of the High Court or the Court of Appeal as the case may be;
- ( v) that the costs of this application shall be costs in the cause;
- ( vi) that either party to have liberty to apply generally.

*Moti Tikaram*

.....  
 Sir Moti Tikaram  
President, Fiji Court of Appeal