

IN THE COURT OF APPEAL OF FIJI
[ON APPEAL FROM THE HIGH COURT]

Civil Appeal No. ABU 0036 of 2015

On appeal from High Court of Lautoka HAC 52 of 2013

BETWEEN : MICHAEL CHANDRA MANI
1ST Appellant

AND : SHIRLY ROSINA MANI
2ND Appellant

AND : DONALD MANI
Respondent

Coram : Chandra JA
Prematilaka JA
Seneviratne JA

Counsel : Mr. M. Fesaitu for the Appellants
Mr. M. A. Khan for the Respondent

Date of Hearing : 3rd May, 2017

Date of Judgment : 26th May, 2017

JUDGMENT

Chandra JA

I agree with the reasons and conclusions of Seneviratne JA.

Prematilaka JA

I agree with the reasons and conclusions of Seneviratne JA.

Seneviratne JA

- [1] This is an appeal from the judgment of the learned High Court Judge delivered on 14th May 2015.
- [2] The Plaintiff-respondent (the respondent) instituted these proceedings in the High Court of Lautoka praying for the following reliefs;
- (a) That the respondent is entitled to possession and the Defendants-appellants (the appellants) is to give up vacant possession of the property described as Housing Authority Sub-Lease No. 313037 as Lot 2 on DP No. 5961 Situated in the district of Vuda in the province of Ba containing an area of 1103 m².
 - (b) The sum of \$48,000.00 as rental income for the past 5 years.
 - (c) Interests and costs of and incidental to these proceedings on an indemnity basis.
- [3] The respondent's case before the High Court was that on 12th October 2006 he and the appellants entered in to an agreement (P3) of sale and purchase in respect of the property which is the subject matter of these proceedings. The terms of the agreement are briefly as follows;
- a. Parties agree that \$86,595.97 is the outstanding balance owed under the mortgage of FDB as at 11/10/06;
 - b. The respondent to pay the FDB arrears being \$3181.12 as at 11/10/06 and pay instalments of \$1000.00 until the respondent makes arrangements from his finance institution to pay off FDB;
 - c. The respondent was to transfer his land located at 25 Adams Place to the appellants after paying ANZ Bank;
 - d. The respondent to pay all liabilities of the appellants to a total amount of \$26,781.12.

e. The agreed purchase price is \$18,377.09.

[4] The respondent also averred that the said agreement was terminated and on 15th March 2007 they entered into another agreement, the particulars of which are as follows;

- a. The appellants agreed to sell their property situated at Lot 27 Adam Place Lautoka to the respondent.
- b. The total purchase price is \$130,000.00;
- c. the appellants acknowledge receiving \$40,000.00 from the respondent;
- d. The balance of \$90,000.00, to be paid within 60 days;
- e. The respondent to pay all legal costs for the transfer.

[5] According to the respondent, the appellants on 21 May 2007 signed the Transfer of Lease and transferred the said property to the respondent for a consideration of \$90,000.00 which was paid to the mortgagee to redeem the appellants' mortgage. After the property was transferred to the respondent the appellants continued to be in possession of the property claiming that the respondent owed them \$15,000.00.

[6] In their statement of defence the appellants denied that they entered into an agreement with the respondent on 15th March 2007 and averred that they only signed a letter addressed to the Bank of Baroda for the respondent to obtain a loan.

[7] The appellants admit that they transferred the property in question to the respondent but averred that the respondent was purported to transfer his property situated at No. 25 Adams Street to the appellants and that the respondent agreed to pay \$15,000.00 to the appellants. It is the position of the appellants that there was an implied term of the agreement that the appellants would occupy the property until such time the respondent transferred the vacant possession of the land and paid the sum of \$15,000.00. The appellants also claimed by way of a counter claim \$3950.00 for maintaining the vacant land from October 2006 to April 2013 and \$8000.00 for the expenses incurred by them to maintain the house.

[8] The High court declared that the respondent is entitled to the possession of the property which is the subject matter of this action and ordered the appellants to give up possession. The learned trial Judge also ordered that the respondent is entitled to recover a sum of \$48,000.00 as rental income for the past five years. The appellants counter claim was dismissed and they were ordered to pay \$3,000.00 as costs (summarily assessed) of the action.

[9] The appellants appealed against the judgment of the learned High Court Judge on the following grounds;

1. That the learned Trial Judge erred in law and in fact in holding that the 1st agreement was withdrawn and the letter dated 15th of March 2007 constituted the 2nd sale and purchase agreement when the letter was only written to the Manager of Bank of Baroda to facilitate the loan application by the respondent.
2. That the learned Trial Judge erred in law and in fact in holding that the respondent is entitled to \$48,000 in rental income when there was no consent obtained from the Housing Authority to put the property on rent.
3. That the learned Trial Judge erred in law and in fact in holding that the respondent had paid \$40,000 in mortgage repayment when there was no documentary evidence submitted by the respondent to prove the payment of \$40,000.
4. That the learned Trial Judge erred in law and in fact in striking out the statement of defence and counter claim of the appellants and holding that the appellants did not call any witness to prove their defence and counter claim.

[10] The learned counsel for the appellants submitted that the appellants would rely only on 1st and 3rd grounds of appeal. Therefore, the 2nd and 4th grounds of appeal will not be considered in this judgment.

[11] In the letter dated 15th March 2007 (P5) written by the appellants to the Bank of Baroda it is stated that they agree to sell the property at No. 27 Adams Place, Lautoka for \$130,000.00 out of which the respondent had already paid \$40,000.00 to the appellants and the balance of \$90,000.00 to be paid within 60 days.

[12] In reply to paragraph 6 of the statement of claim where it is averred that a second agreement was entered into by the parties on 15th March 2007, the appellants state in their statement of defence that they signed this letter under duress to obtain a loan from the Bank Of Baroda. The burden of proving that their signatures were obtained under duress was on the appellants but they have failed to discharge that burden. The appellants, without adducing any evidence at the trial to substantiate their position that their signatures were obtained under duress, cannot for the first time challenge the legality of "P5" in appeal.

[13] It is submitted by the learned counsel for the appellants that the learned High Court Judge erred in holding that the letter “P5” is a sale and purchase agreement between the parties.

[14] To create a contract between the parties there must be offer and acceptance. Lord Wilberforce made the following observation in this regard in the case of ***New Zealand Shipping Co Ltd v A M Satterthwaite & Co Ltd*** [1975] AC at 167;

English Law, having committed itself to a rather technical and schematic doctrine of contract, in application takes a practical approach, often at the cost of forcing the facts to fit uneasily into the marked slots of offer, acceptance and consideration.

[15] The first task of the respondent is to prove the presence of a definite offer made by the appellants. There is no evidence that by letter “P5” the appellants made an offer for sale of the property in question to the respondent.

[16] Entering into an agreement (contract) is meeting of minds (*consensus ad idem*) which means both parties to an agreement have the same understanding of its terms and conditions. The document “P5” is certainly not an offer to sell the property.

[17] The finding of the learned trial Judge that the document “P5” is a sale and purchase agreement is therefore, erroneous. However, this error in the judgment does not have the effect of vitiating the entire judgment for the reasons set out below. It is also pertinent to mention that every single error in a judgment does not have the effect of vitiating it in its entirety. It has to be a mistake that goes to the root of the matter which has the effect of causing injustice to the parties.

[18] It is averred in the statement of defence by the appellants that the property was sold in good faith and based on the sale and purchase agreement dated 12th October 2006. Since the appellants have admitted that the property in question has been transferred to the respondent, which fact is also borne out by the Transfer of Lease marked as “P11”, the question whether there was an agreement to sell prior to the transfer of the property in question or not does not arise for consideration. Even if there was a sale and purchase agreement once the transfer is completed any such agreement would become redundant so far as the sale is concerned.

[19] The learned counsel submitted that the learned trial Judge erred in holding that the respondent had paid \$40,000.00 in mortgage repayment when there was no documentary evidence tendered by the respondent to establish such payment.

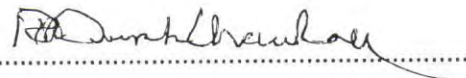
[20] There is no rule of evidence that every piece of evidence adduced before a court of law must be corroborated by other evidence. However, in this case the letter "P5" corroborates the evidence of the respondent that he paid \$40000.00 in settlement of the mortgage. Therefore, the argument that the learned trial Judge had no evidence to hold that the respondent had paid the said amount is without merit.

[21] For the reasons given above the 3rd ground of appeal that the learned trial Judge erred in finding that \$40,000.00 has been paid by the respondent to the appellants is without merit and must necessarily fail.

[22] It is also pertinent to note that the appellants have not claimed \$40,000.00 from the respondent. All what they have claimed by way of their counter-claim is \$3950.00 and \$8000.00 for the maintenance of the vacant land and the house respectively, as special damages and damages for stress, disturbance and humiliation and for the loss of reputation. Even if the court decides that \$40,000.00 has not been paid by the respondent, the court is not in a position to award that amount to the appellant since the court is not entitled to grant reliefs that are not prayed for in the pleadings.

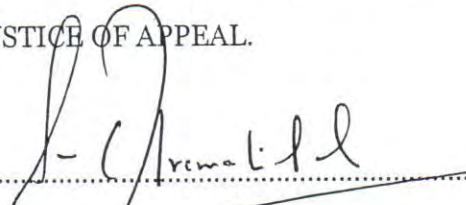
[23] For the reasons aforementioned the court makes the following orders:

1. The appeal of the appellants is dismissed.
2. Parties to bear their own costs of the appeal.



Hon. Mr. Justice Suresh Chandra
JUSTICE OF APPEAL.





Hon. Mr. Justice Chandana Prematilaka
JUSTICE OF APPEAL



Hon. Mr. Justice Lyone Seneviratne
JUSTICE OF APPEAL