

Fiji High Court, Lautoka
23rd February 2001, 6th May 2002
14th September 2007

Civil Action
HBC050.84L

Gates J

JUDGMENT

1st Defendant's summons to strike out for want of prosecution; pleadings disclosing no reasonable cause of action; lack of particulars of title to land claimed; several amendments; unsustainability of claim; decision of Director of Lands to grant Crown Lease to 1st Defendant; pleadings not capable of amendment; two periods of 5 years each when no step in action taken by plaintiff; inordinate delay; no excuse proffered; prejudice to defendants; difficulty in achieving fair trial.

Mr G.P. Shankar for Plaintiff
Mr S. Ram for 1st Defendant
No appearance for 2nd Defendant [Director of Lands]

[1] Action was filed by the plaintiff's first solicitors in 1984. The statement of claim was in the following brief terms:

- “1. THAT the Plaintiff and the 1st Defendant were at all material times farmers and brothers.
2. THAT the Plaintiff among other lands owns a piece of land of approximately an area of 2½ acres known as “house site” (hereinafter called the said land).
3. THAT the Plaintiff had been occupying the said land since 1972 as the 2nd defendant's lessee.
4. THAT the said land was wrongly and unlawfully fenced by the 1st defendant.
5. THAT the 1st Defendant has since then unlawfully and without any right been occupying the said land is thereby depriving and interfering with the Plaintiff's right of enjoyment.

6. WHEREOF the Plaintiff claims : -

- a) Vacant possession of the said land.
- b) An injunction restraining the 1st Defendant from interfering with the Plaintiff's land.
- c) Damages."

[2] The pleadings did not state the nature of the landholding claimed, its registered lease number, nor its whereabouts. The 1st defendant's solicitor entered an appearance and immediately issued a summons to strike out [Order 18 r.19] on the ground that the pleadings disclosed no reasonable cause of action. The summons stated that the allegation as pleaded as to ownership of land was ambiguous. There were no particulars identifying the land, where it was situated, whether the lease was oral or written, and if written, the date and terms thereof. This summons was later withdrawn on the understanding the plaintiff would amend his claim.

[3] In the amendment the plaintiff claimed he was "the registered owner of a piece of land more particularly known as L.D.4/1/1973 Lot 263". The claim referred to the plaintiff being the owner of another piece of land which was part of the same land known as a house site. The statement of claim had a plan attached. This was a breach of pleading rules and anyway was of little assistance on the issue as to the nature of the ownership claimed. In addition the plaintiff claimed to be a lessee of the Director of Lands, the 2nd defendant and that he had been paying rent to the 2nd defendant. There was nothing to suggest this was a genuine claim.

[4] A further strike out summons was issued by the 1st defendant saying the amended statement of claim still did not attend to the criticisms raised and left the 1st defendant embarrassed in making his defence. There remained ambiguities and there was a lack of particulars.

[5] At court, no doubt at the suggestion of the judge, the plaintiff's counsel was persuaded to be more precise and to amend again. The 1st defendant withdrew his strike out summons on the basis of an assurance from plaintiff's counsel of a clearer statement of claim yet to be filed.

[6] Nonetheless the 1st defendant filed his defence. In it he denied the plaintiff lived on or owned the land in question. The defendant said he, the 1st defendant, held the land as a tenant of the Colonial Sugar Refining Company Ltd since 1957 till 31st March 1973, and thereafter as a tenant of the Director of Lands. Once the Director of lands resumed the freehold, the 1st defendant held both the farm and the relevant Lot under the lease approval, No. 4/1/1747.

[7] In his defence the Director of Lands pleaded that the parents of the 1st defendant owned and occupied the house site (the disputed land) as lawful tenants of the Crown. The plaintiff had purchased an old timber dwelling from the 1st defendant's mother for \$100 and later removed the building from the house site.

[8] The Director ended his pleadings by stating that he was prepared to issue a lease, that is a Crown Lease, to the 1st defendant because the land had previously been occupied by the 1st defendant's parents, the land was adjacent to the 1st defendant's own land, and he had been in continuous occupation of such land. As far as the plaintiff was concerned, the Director said he was already the holder of a separate Crown Lease and that that land was situated a considerable distance from the disputed land. He gave no support to the claim of the plaintiff as pleaded that the plaintiff held the land as a lessee of the Director of Lands.

[9] Orders were made on a summons for directions in April 1985. Copy pleadings were filed in January 1986 together with the List of Documents. The plaintiff revealed a photocopy of a plan. There appeared to be no other documentary evidence from the plaintiff.

[10] The matter came before the Deputy Registrar on 9th December 1988 but no counsel are recorded as having appeared. The 1st defendant deposed in this affidavit that the matter had not been set down for trial. The plaintiff's son Ramesh Chand in his affidavit of 22nd August 2000 said he was advised the matter had been set down for trial. He did not say who told him so. In this affidavit, which was filed over 2 months out of time, the factual information in support of the plaintiff's claim is scanty, almost non-existent.

[11] He said "the disputed land" belonged to his grandfather Puran. On his grandfather's death the entire Estate became vested in his grandmother and after her death the plaintiff "inherited the Estate."

[12] On 6th April 2000 the 1st defendant applied to strike out the plaintiff's claim, both for want of prosecution and for lack of a reasonable cause of action.

[13] The plaintiff has failed to specify his title. Adversely for him, and in support of the Director's pleadings, the 1st defendant exhibited to his affidavit the Director's approval notice for the Crown Lease to be issued to the 1st defendant. This was dated 1974 for Farm 1021, Lot 247, CT 7822. The letter was countersigned by the 1st defendant accepting the lease on the terms and conditions as set out in the approval notice. That was for the adjoining piece of land to the piece presently disputed.

[14] Fraud has not been pleaded, though improper influence is suggested in Ramesh Chand's affidavit because of a relationship between a member of the Director's staff and the 1st defendant's sister. In the circumstances no regard can be had to unpleaded and unspecified allegations or innuendo.

[15] The Director's statement of his position on the grant of a Crown Lease to the 1st defendant for the disputed land is an end of the matter. The plaintiff's claim is clearly unsustainable. This may explain why Mr Shankar did not address the no reasonable cause of action matter in his written submissions.

[16] After the last strike out summons was filed, solicitors for the sons of the plaintiff purporting to act for the sons as substituted plaintiffs sought to recast the statement of claim radically. However even this did not suggest any further likelihood of success. I am satisfied the plaintiff does not have the rights that are claimed for him: *Dyson v A-G* [1911] 1 K.B. 410. It is necessary to put an end to these proceedings: *Metropolitan Bank v Pooley* (1885) 10 App. Cas. 210.

[17] In addition there has been inordinate delay in the prosecution of this suit. The 1st defendant's solicitors took out a strike out summons on 20th July 1993 since nothing had happened to set the matter down for trial between 1988 to 1993, a period of 5 years. The matter stagnated. Solicitors for the plaintiff filed a summons also for strike out suggesting the 1st defendant had failed to attend a pre-trial conference. The 1st defendant in his affidavit denied he or his solicitors had ever been served with such a notice. He also referred to the fact that the affidavit of service had not been sworn by the same person who it was claimed had served the notice, and no details were deposed to, giving the place and date of service. These summonses were eventually withdrawn, but the period of inaction is to be considered when the question of inordinate delay overall is to be assessed.

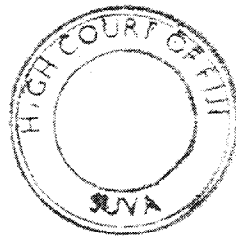
[18] New solicitors came in for the 1st defendant and filed Notice of Change of Solicitors and Notice of Intention to Proceed. This was done in April 1999. There had been therefore a further 5 years, 1994-1999, when the plaintiff had not proceeded with his claim to trial. Other solicitors came in for the 1st defendant and this appears to have prompted the plaintiff's solicitors to serve a Notice of Intention to Proceed immediately thereafter.

[19] There has been inordinate delay here in the prosecution of the plaintiff's claim. No excuse has been provided in the affidavit material. No effort has been demonstrated such as by pressing the Registrar to bring the matter up for trial dates to be allocated. In view of the unsustainability in law of the claim, it is possible the 1st defendant was

correct in his view that after the brothers fell out, the plaintiff was determined to make his life difficult, and that this was one reason for the prolongation of hopeless litigation.

[20] Not only was the delay inordinate and without proffered excuse, it is doubtful in this case whether surviving witnesses could easily attend court, or remember relevant events. In view of the conclusion I have reached on the obvious untenability of this claim difficulties with witnesses looms less large. The Director's stated written position on the matter is conclusive, and nothing raised by the plaintiff unsettles that stance in the determination of the title to the land.

[21] The plaintiff's claim is accordingly struck out as disclosing no reasonable cause of action. I would also have dismissed the claim for want of prosecution also.



A.H.C.T. Gates
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A.H.C.T. GATES
ACTING CHIEF JUSTICE

Solicitors for the Plaintiff : Messrs Chandra Singh & Associates, Tavua
Solicitors for the 1st Defendant : Messrs Samuel K. Ram, Ba
Solicitors for the 2nd Defendant : Office of the Attorney-General, Suva