

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

HBC No. 425 of 2008

Between: Prakash Singh and Deo Raj

Plaintiff

And: Huang Tan Hsiang

Defendant

Appearances: The first plaintiff in person

Mr Suresh Chandra for the defendant

Date of hearing: 23rd October, 2012

JUDGMENT

1. *Introduction*

The first plaintiff and Gurmej Singh, as vendors,(collectively referred to as “*vendors*”) entered into a sale and purchase agreement, to sell “*6 acres more or less*” of freehold land from CT 6491 to the defendant and Horng Huey Jen,(collectively referred to as “*purchasers*”) at \$ 10,000 an acre. The vendors executed a transfer of an extent of 3.4331 hectares by CT 29754 to the purchasers, for a consideration of \$60,000.

In these proceedings, the first plaintiff claims that \$ 9800 of the consideration money was unpaid by the defendant. The plaintiffs also claim that the defendant had failed to retransfer to the second named plaintiff, an extent of two and a half acres of land. This extent was also transferred to the purchaser by CT 29754, since the exact extent of land contracted to be sold was unknown, at the time the sale and purchase agreement was entered into.

The defendant disputes the claim and states he paid the entire consideration for the six acres and the two and a half acres.

2. ***The amended statement of claim***

The amended statement of claim provides that the vendors had sold to the defendant, six acres of land from CT 6491, Lot 1 on DP 7716 comprising six and a half acres. The defendant paid \$ 50,200. The first plaintiff claims the balance consideration with interest at 13.5%. The amended statement of claim finally states that the defendant promised to transfer two and a half acres of land to the plaintiffs

3. ***The statement of defence***

The defendant, in his statement of defence, states that :

- a sale and purchase agreement was executed between him and the first plaintiff on 13th October, 1995, pertaining to CT 6491, Lot 1 on DP 7716.
- he is not privy to any agreement between the first and second plaintiff.
- the claim ought to be struck out, in particular, the second plaintiff's claim, as it lacks particulars and is scandalous, frivolous and vexatious .
- the claim is statute barred.

4. ***The reply of the first plaintiff to the statement of defence***

The first plaintiff, in his reply states that:

- The defendant admits the agreement of 13th October, 1995, which clearly provides that the first plaintiff has sold six acres of land to the defendant.
- The defendant promised the plaintiffs that he would transfer two and a half acres of land to the second plaintiff.
- The first plaintiff had sold two and a half acres of land to the second plaintiff, which the defendant was aware of.
- The defendant has not paid the first plaintiff \$9,800 for six acres of land and has no documentary proof in support. The defendant was supposed to give the first plaintiff, a bank cheque of \$55,000.
- The case is not time-barred, as the defendant was continuing to make payments.

5. *The hearing*

5.1 *The first plaintiff*

5.1.1 The first plaintiff testified. He stated that he entered into a sale and purchase agreement dated 13th October, 1995, to sell six acres of land on DP 1071 of CT No.6491 to the defendant, at \$10,000 an acre. The total purchase price was \$60,000. A sum of \$ 5000 was paid, at the execution of the transfer instrument. The first plaintiff stated that the defendant had paid him, a total sum of \$ 50,200. A sum of \$ 9800 was outstanding. An additional extent of two and a half acres of the land property was also transferred to the defendant. The defendant has to return two and a half acres of the land, to the second plaintiff.

5.1.2 In cross-examination, it transpired that at the time the sale and purchase agreement was executed, there was no survey plan registered in respect of CT 6491 on DP 7716. The six acres was not identified. The first plaintiff, in answer to Mr Suresh Chandra, counsel for the defendant, said that the words “6 acres more or less” in the sale and purchase agreement meant six acres was to be sold and the balance returned to him. He admitted that there was no instrument in writing, in this regard. The first plaintiff said that he trusted the defendant and relied on his honesty.

5.1.3 The first plaintiff further stated that when he signed the transfer document, he did not know that the extent of 3.4331 hectares stated in CT 29754, was equivalent to eight and a half acres. It was not explained to him. The defendant had engaged a solicitor, to draft the sale and purchase agreement. The defendant was present, when the agreement was explained.

5.1.4 Mr Suresh Chandra put it to the witness that his statement of claim, does not aver that a fraudulent transfer was effected. It emerged that the first plaintiff had written a letter to the Immigration Dept in September, 1999, stating that the

defendant had purchased eight and a half acres. It was put to the witness that he had not made any claim for the return of two and a half acres, at the time the land was transferred to the defendant in 1996, nor in 1999, but only in 2008, when the land has become valuable.

5.2 The defendant's evidence

5.2.1 The defendant, in his testimony, said that the sale price of the six acres of land was \$ 60,000. The lawyer had explained to him that the extent of land was six acres and if there was an excess, he would have to pay more, subsequently. There was no subdivision of the land at the time, the agreement was entered into. The entire land was transferred, upon payment of \$ 60,000. There was no agreement with respect to the re-transfer of two and a half acres to the second plaintiff, as alleged. There was a verbal agreement that the defendant pay the plaintiffs, for any additional extent of land at \$ 10,000 an acre. The defendant said that he paid a sum of \$ 25,000 for the additional two and a half acres. He produced receipts for payments given by the first plaintiff. Until 2008, the plaintiff had not made a claim on the defendant.

5.2.2 Under cross-examination by the first plaintiff, the defendant denied that he had not paid the full amount due for the six acres and the two and a half acres. The defendant admitted that he had agreed to buy six acres, in terms of the sale and purchase agreement. If there was more than six acres, he would have to pay for the extra land.

5.2.3 In re-examination, the defendant reiterated that there was no agreement with the first plaintiff, for the transfer back of two and a half acres, to the second plaintiff.

6. The determination

6.1 The starting point is the sale and purchase agreement dated 13th October, 1995, entered into between the vendors and purchasers.

This agreement provides that:

- “**6 acres more or less**” of land was to be sold to the purchasers at \$10,000 an acre. (emphasis added)
- The total purchase price was \$60,000.
- A sum of \$ 5000 was to be paid to the vendors, upon settlement.
- The settlement was to be “**after the Subdivision Plan has been approved ..and Registered with the Titles Office.**”(emphasis added)
- The vendors were to give a registrable transfer of the property to the purchasers, in exchange of bank cheque for \$ 55,000.

6.2 On 10th April, 1996, the vendors executed a transfer of the land to the purchasers.

6.3 *The first claim*

The first claim relates to a sum of \$ 9800 of the \$ 60,000 consideration money, alleged to be unpaid by the defendant. It is further alleged that the defendant does not have documentary evidence, as proof of payment of this money.

6.3.1 In my view, it is unlikely that the vendors would have handed over the registrable transfer of six acres of land, unless they received the entire consideration of \$ 60,000 from the purchasers.

6.3.2 The first plaintiff’s claim is refuted by the transfer instrument of 10th April,1996. This provides as follows:

in consideration of the sum of \$ 60,000..this day paid to the transferor..by (the defendants).. the transferee, the receipt of which sum the transferor doth hereby acknowledge, doth hereby TRANSFER to the transferee all the right title and interest of the transferor in the said land.(emphasis added)

6.3.3 In my judgment, the proof of payment, of which the onus would ordinarily, shift to the defendant, is met by

this covenant, where the vendors expressly acknowledge the receipt of the consideration of \$60,000.

6.3.4 In any event, the first plaintiff's claim is time-barred, as pleaded in the statement of defence. In terms of the sale and purchase agreement, the vendors, agreed to hand over a registrable transfer of the property to the purchasers, on the date of settlement, in exchange of a bank cheque for the balance purchase price of \$ 55,000. The instrument of title provides that the settlement was completed on 10th April, 1996. The period of limitation of six years begins to run from the day after the date of settlement. This claim is made 12 years from that date.

6.3.5 In my judgment, the claim for \$ 9800 is unfounded.

6.4 *The second claim*

The statement of claim also alleges that the defendant had not retransferred to the second named plaintiff, two and a half acres of land, as promised.

6.4.1 It is not disputed that after the sale, it was revealed that CT 29754 comprised a total extent of eight and a half acres.

6.4.2 The first plaintiff, in his evidence, said that the phrase "6 acres more or less" in the sale and purchase agreement meant that six acres was to be sold, and any extent in excess was to be returned to the second named plaintiff. The defendant, in his testimony, said that in accordance with his verbal agreement with the first plaintiff, he paid the first plaintiff \$25,000 for the two and a half acres.

6.4.3 I did not find the first plaintiff to be a credible witness. I find his evidence on this claim too, to be contradicted by the documentary evidence. I do not accept his evidence that the two and a half acres was to be

retransferred to the second named plaintiff. The second named plaintiff was not a party to the sale and purchase agreement. Moreover, he did not testify in support of this claim. I agree with the defence that this claim is frivolous and vexatious. I dismiss this claim.

6.4.4 The evidence reveals that the first plaintiff, by the following documents acknowledged the following payments made by the defendant:

(a) By receipt dated 22nd April, 1996, that the “*Total received to date, \$20,000.00*” .

(b) By receipt dated 25th April, 1996, that the “*Total received - \$25,000.00*”. (emphasis added)

6.4.5 The payment of the consideration for the six acres was completed on 10th April, 1996. In my judgment, the reference to \$ 25,000 must by necessary implication, if not expressly, mean the payment by the defendant, for the two and a half acres.

6.4.6 One last point for consideration, under this heading. The defendant, in its closing submissions, contends that the oral agreement between the parties, as regards the two and a half acres, cannot be enforced in the light of section 59 (d) of the Indemnity Guarantee and Bailment Act, (cap 232).

6.4.7 I note that section 59(d) is not pleaded in the statement of defence. I also find it strange that having paid for the two and a half acres, the defendant relies on section 59(d). The defendant cannot approbate and reprobate.

6.4.8 The words of reference in the sale and purchase agreement are that “*6 acres more or less*” of land was agreed to be sold. (emphasis added) This was clearly a contemplation of the land sold, in addition to the six acres. Accordingly, in my view, there is conformity with section 59 (d).

6.5 I finally come to a letter of commendation written on 8 September, 1999, by the first plaintiff to the Fiji Immigration Dept, three years after the transfer was effected. I read the letter in its entirety.

This is to advise and confirm that I have known HUANG TAN HSIANG way back from 1990.

During that period he used to sell Rice Wine and also a rice farmer in Yarawa. Later he moved to Navua for the same venture.

From 1996 – 1997 he was approached by the then Minister for Primary Industries, Kaukimoce to do a rice planting project on a 5 acre block at Lakena, Nausori.

Whilst his stay there he was provided with free accommodation for his services to the Fiji Government.

I have known him to be a very hard working person especially in his field of expertise.

He is a very kind and a soft spoken person and has helped many poor people by giving them jobs in his 8 ½ acre free-hold land that he has bought from me.

This land is located at Veisari, 7 1/2 miles and which is nearing completion on the proposed subdivision consisting of 25 residential, commercial and industrial lots.

To my knowledge about a quarter million dollars has already been invested on this project.

This shows he has a lot of promise for this country.

I wish Mr Huang all the best in his present project and his endeavours in his future pursuits. (emphasis added)

6.6 I find it simply inconceivable that the first plaintiff would write such a glowing letter extolling the benevolence of the defendant in helping “*poor people by giving them jobs in his 8 ½ acre free-hold land that he has bought from (the first plaintiff)*”, if he was a fraudster, as claimed in these proceedings.

7. *Orders*

I dismiss the action of the plaintiffs. The first plaintiff shall pay the defendant costs summarily assessed in a sum of \$ 2000.

15 November , 2013

A.L.B.Brito-Mutunayagam

Judge