

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

CIVIL ACTION NO. HBA 09 OF 2011

BETWEEN : **NARENDRA PRASAD**
Appellant

A N D : **ROHINI LATA PRASAD & ANOTHER**
Respondents

Counsel : **Mr. S. Jioji for the Appellant**
Mr. I. Samad for the Respondents

Date of Hearing : **4 October 2013**

Date of Judgment : **7 November, 2013**

JUDGMENT

[1]. The appellant in this case is appealing against the judgment of the learned Magistrate dated 29 March 2011. Appellant has filed a statement of claim against the Respondent. He is the brother-in-law of the first respondent Rohini Lata Prasad.

[2]. The Appellant alleged in the statement of claim that he had lent \$7,300 on 27 June 2007; and \$7,000 on 30 March 2007 to the Defendant to purchase a Toyota Minivan and a Massey Ferguson tractor. The Appellant also stated that he had lent \$25,000 on 19 March 2007 to the defendant to purchase a crown lease. At the trial the Appellant had not pursued with the third claim and had limited his cause only to the first and second claims to the value of \$14,300.

- [3]. The Appellant inter alia claim for the money lent, for the interest on the sum claimed and for the cost in the action.
- [4]. The Appellant had stated that there had been a Bill of Sale prepared for the money lent, but the said Bill of Sale was never presented to the court. The Respondent's late husband had never signed the Bill of Sale.
- [5]. The Respondents in their Statement of Defence denied the allegation of money being lent and stated that the monies was given as a gift to the first Respondent's late husband. The said monies was never asked by the Appellant when his brother the Respondent's late husband was alive and put the Plaintiff into strict proof of the claim.
- [6]. The learned Magistrate by her judgment dated 29 March 2011, held among other things that the Appellant had given \$14, 300 to the defendant and the deceased husband, and further held that there was no evidence pertaining to a preparation of a Bill of Sale. No Bill of Sale was produced, and no reasons were given for the deceased to have not signed the Bill of Sale for two years. There was no evidence to show that a time period was given for repayment (if it was a loan) and that there was no onus on the Defendant to prove that the money was given as a gift.
- [7]. In conclusion the Magistrate held that the Appellant had failed to prove that he had given the money as a loan to the deceased brother and the Defendant. The Appellant had parted with the money without a firm expectation of having it back and dismissed the Appellant's claim with cost.

Grounds of Appeal

- [8]. 1. *That the learned Magistrate erred as a matter of law in concluding that the advancing of money by the Appellant to the Respondent without any firm*

expectation of having it returned, unless the Respondent was successful in farming, amounted to a Gift.

2. *That the finding of the learned Magistrate that the monies advanced by the Appellant to the Respondent was a Gift went against the weight of evidence and the stated conclusion of the learned Magistrate in the Judgment that the monies were given by the Appellant to the Respondent without the expectation that it would be repaid unless the farm was successful.*
3. *That the learned Magistrate erred as a matter of law in concluding that the monies advance by the Appellant to the Respondent without any firm expectation of having it returned, unless the Respondent was successful in farming, is a Gift in the absence of evidence of a Bill of Sale securing its repayment.*

Determination

- [9]. The Appellant's counsel conceded that the main issue in this case is whether the learned Magistrate erred in law, when she held that the money lent by the Appellant was a gift.
- [10]. Even though the Appellant had claimed that the claim was based on monies lent. The Appellant had failed to prove that in fact the money was a loan. The specific word used by the Appellant in the three claims is "lent".
- [11]. At the argument, the counsel for the Appellant conceded that there was no Bill of Sale. Accordingly the Appellant's initial contention that the money had been lent on a Bill of Sale fails.
- [12]. The Appellant has failed to produce any documents in proof of a loan.

- [13]. As per the analysis of the evidence of the Plaintiff the learned Magistrate had observed the contention of the plaintiff, that the Defendant had promised to pay back the money when the farm is up and running. (The Respondent's has denied this allegation). However I observe that there is no evidence led to show that the farm had been up and running. As per the Appellant's contention he was to get back his money only if the farm had been up and running. The learned Magistrate has quite correctly held that if the deceased failed in his farming the Appellant was not in a position to get the money back. There is no evidence to show that the farm was "up and running" for the Appellant to be entitled to get any money back. Accordingly court had come to the conclusion that the money had been given to the deceased not as a loan but as a gift.
- [14]. The Appellant's entire Statement of Claim was based on the fact that he had lent the money. For the Appellant to obtain the relief's claimed, he has to prove his case and in the absence of any evidence to prove his claim of a loan, the learned Magistrate has correctly held that the Appellant had failed to prove his claim of giving money to the brother as a loan.
- [15]. When the Plaintiff fails to prove his cause court need not express whether the defendant has got the money as a gift. As the Statement of Claim has to be dismissed, for want of proof.
- [16]. The Appellant sighted several judgments before this court. The appellant's cited the case of *Fibrosa Spolka Akcyjna –v- Fairbairn Lawson Combe Barbour Limited* (1942) UKHL 4 (TAB 1). However I find the facts in the case before me differs from the case cited. Specially in the present case there is no admission of a contract by the parties.
- [17]. The Appellant has failed to establish that there had been a promise to pay back the money or that the money was lent and meant to be a loan. Accordingly the first ground of appeal fails.

- [18]. The Appellant's second and third grounds of appeal in a nutshell is that the learned Magistrate finding that the monies advance by the Appellant to the Respondent was a gift went against the weight of the evidence. On a close consideration of the learned Magistrate's order I find that the learned Magistrate has dismissed the claim on the basis of the Appellant failing to prove his claim. Accordingly all the main grounds of appeal fails.
- [19]. I find that the authority cited by the Appellant in support of the contention of a "gift" is irrelevant to the present case and the facts, differs from the case before me.
- [20]. I further hold in this case when the plaintiff fails to prove his claim on the grounds pleaded in the Statement of Claim, there is no onus on the Defendant to establish a defence.
- [21]. Accordingly I find that there are no merits in the grounds of appeal submitted.
- [22]. For the above stated reasons I dismiss the Appellant's appeal with cost summarily assessed in a sum of \$ 1000 payable by the Appellant to the Respondent.

Mayadunne Corea

JUDGE

7.11.2013