

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL APPELLATE JURISDICTION

CASE NUMBER:

HBC 48 of 2014

BETWEEN:

MUNESH PRASAD

APPLICANT

AND:

RAJESH PRASAD and USHA PRASAD

RESPONDENTS

Appearances:

*Mr. Naipote Vere for the Appellant.*

*Mr. Sen for the Respondents.*

Date/Place of Judgment:

*Wednesday 27 April 2016 at Suva.*

Coram:

*The Hon. Madam Justice Anjala Wati.*

---

**JUDGMENT**

Catchwords:

*Order for Vacant Possession -Stay Application – No proper appeal before the Higher Court against the order for vacant possession for stay application to be relied on-application for extension of time to appeal filed in the Higher Court after original appeal struck out for want of prosecution- the occupants of the land have to show cause why vacant possession of the land should not be granted- mere speculation of fraud is not sufficient to impeach a registered owners title to the land- No cause shown in the trial court why vacant possession should not be given- stay of execution for an order for vacant possession therefore not sustainable.*

---

1. The applicant Munesh Prasad applies for a stay of execution of an order for vacant possession against him of the land known as *Lot 1 on DP No. 5321 "Nacekoro" in the district of Savusavu in the Island of Vanua Levu containing an area of one hectare, eight thousand nine hundred and seventy-six square metres comprised and described in Certificate of Title No. 21229 and situated at Buca, Nacekoro Road, Savusavu.*
2. The order for vacant possession was made on 2 December 2015 and execution was stayed until 31 December 2015.
3. At the time of the hearing of the stay application, it was confirmed by counsel for both the parties that there did not exist an appeal against the decision of 2 December 2015 granting an order for vacant possession against the applicant.
4. The applicant had filed an appeal initially which was struck out as there was no appearance on the day the matter was listed for security for courts before the Chief Registrar. In other words there was failure to prosecute the matter.
5. I enquired from Mr. Naipote Vere the basis on which a stay can be granted without a proper appeal to the Court of Appeal.
6. Mr. Vere then requested that the stay application be adjourned until such time he files his application for extension of time to file an appeal against the decision of 2 December 2015 or application to reinstate the matter struck out by the Chief Registrar.
7. I found it procedurally improper to adjourn the stay application to allow the applicant to file his appeal proper to give the stay same basis to survive.
8. It is for counsel to prosecute their appeal with due dispatch. If there is no appeal on foot, there is simply no basis for a stay application.
9. On 19 April 2016 the applicant filed in the Court of Appeal an application for extension of time to file its appeal in Court of Appeal. A copy of the said application was forwarded to my chambers through the High Court Civil Registry. There is nothing before me to indicate



that Mr. Sen was informed of such an application being made for him to respond on the effect of the same.

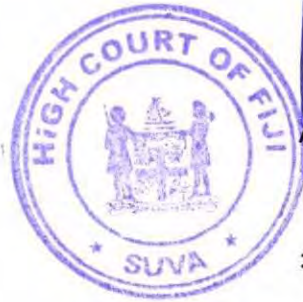
10. The application of 19 April 2016 is not a proper appeal in the Court of Appeal and does not give any basis for a stay.
11. The extension may or may not be granted and any stay based on the findings that there are on foot grounds of appeal which are not wholly unmeritorious cannot be made at this stage.
12. I consider that since there are no proper grounds of appeal on foot, the stay application is prematurely filed or is rendered premature by the decision of the Chief Registrar to strike out the appeal for want of prosecution.
13. Be that as it may, on merits, I do not find the applicant's argument that the respondent's title to the land can be impeached tenable. This is the only argument that the applicant had raised before the trial Court when he was asked to show why an order for vacant possession should not be made against him. He had stated that the respondent's became the registered proprietors of the property by fraud.
14. The respondents are registered proprietors of the land and the title they hold is not impeachable unless actual fraud can be shown by the applicant and no evidence of actual fraud had been provided to the trial Court or has been put forward before me. The applicant is merely speculating or asking the Court to imply fraud on the part of the applicant.
15. It is speculated by the applicants that since the respondents bought the land from the Bank at a higher price than what the applicant offered, they induced the mortgagee bank to sell the same to them instead of the applicant who had from the bank an unexecuted sale and purchase agreement.
16. The bank is entitled to accept a highest offer on a mortgagee sale to be fair to the mortgagor under the contract. It can be liable to the mortgagor for selling the property at

a value lower than the market price. If the respondent's higher offer got accepted, that is not implication of fraud on their part. There has to be an actual fraud shown and I reiterate that no such evidence was provided to the trial judge.

17. The applicant also implies fraud on the part of the respondents in that they caused the caveat on the property lodged by him to be improperly removed.
18. If the caveat on the property is improperly removed, the cause of action lies against the Registrar of Titles. Any party can make an application for removal of caveat. It is for the Registrar of Titles to exercise vigilance. The removal of the caveat is a mere speculation of fraud which is not sufficient to hold the respondents from the right to use and occupation of their property.
19. The applicant says that the bank refused to sign the sale and purchase agreement with him because it wrongly accepted the respondent's counsel's submission that he was an undischarged bankrupt and that the property cannot be sold to him.
20. The applicant's cause of action not to sell the property to him lies against the bank and not the respondents. It is for the applicant to establish that the bank had improperly breached the contract for sale. There was no evidence provided to the Court that the Bank had entered into any binding contract of sale of the land with him for the applicant to claim an interest in the land.
21. Since the applicant could not establish fraud on the part of the respondents, the order for vacant possession was granted. I do not have any material evidence to convince me that there was an arguable error of law or fact made by the Court when it made an order for vacant possession against the applicant.
22. I therefore refuse the application for stay and order costs against the applicant in the sum of \$1500 to be paid within 21 days.
23. This judgment also applies to Labasa HBC 61 of 2014 as agreed by the parties.



24. Both civil files must now be returned to the Labasa Registry.



*Anjala Wati*

Anjala Wati

Judge

27.04.2016

To:

1. Mr. Naipote Vere for the Applicant.
2. Mr. Sen for the Respondents.
3. File: Labasa HBC 48 of 2014.
4. File: Labasa HBC 61 of 2014.