

IN THE HIGH COURT OF FIJI  
WESTERN DIVISION  
AT LAUTOKA  
[CIVIL JURISDICTION]

CIVIL ACTION NO. : HBC 80 OF 2016

**BETWEEN** : DAVENDRA PRASAD and CHANDRA KIRAN also  
known as PUSHPA both of Namaka, Nadi in the Republic of  
Fiji Islands, Driver and Domestic Duties respectively.  
*Plaintiff*

**AND** : SAVITRI DEVI previously of Namaka, Nadi in the  
Republic of Fiji Islands currently residing in 13 Kovestwood  
Street Creasmead, Queensland 4132, Australia, Retired  
Nurse.  
*Defendant*

**Counsel** : Mr. Jasveel K. Singh for the Plaintiff

**Date of Hearing** : 10<sup>th</sup> May 2016

**Date of Order** : 11<sup>th</sup> May 2016

**Before** : The Hon. Mr. Justice R. S. S. Sapuvida

**ORDER**

[1] This is an ex parte notice of motion filed by the plaintiffs dated 06th May, 2016 for immediate orders for restraining and/or refraining the defendant and/or her agents and/or employees from disposing off the subject property being Certificate of Title No. 38295 being Lot 2 on deposited plan No. 9511 land also known as Waqadra (part of) in the District of Nadi and in the island of Viti Levu [the property].

- [2] The application is supported by the affidavit of Devendra Prasad and Chandra Kiran [the plaintiffs].
- [3] Counsel for plaintiffs supported the ex parte notice of motion on 10th May, 2016.
- [4] The plaintiffs have annexed marked documents "A" to "O" with their affidavit. They have also filed the writ of summons and the statement of claim.
- [5] According to the plaintiffs' statement disclosed in their affidavit in support with regard to the proprietorship of the property in dispute, the registered proprietor of the property is the defendant. It is also revealed that the defendant is the Aunt of first named plaintiff by relationship. [Annexure marked "A" is a copy of the certificate of title to the property].
- [6] In or about the year 1996, the defendant has invited the plaintiffs to reside in the property in dispute without paying any rental since the defendant was planning to migrate overseas, and assuring the plaintiffs that they can reside in the property for lifetime with a condition to keep the property well maintained and to carry out any renovations if required.
- [7] However, there is no written promise or undertaking given by the defendant to that effect.
- [8] The plaintiffs have moved into the property on or about 19th October 1996. The property was not in a proper condition for living and required urgent maintenance, the plaintiffs claim.
- [9] The plaintiffs further assert that they carried out maintenance of the property at their own costs and they developed the property.
- [10] The defendant had come to Fiji in the year 2010 and informed the plaintiffs that she has executed her Last Will and testament [Annexure "B"] on 19th May 2010 whereby she directed the trustee to compensate the plaintiffs in the sum of \$15,000.00 (Fifteen Thousand Dollars) each and/or build another residential property on another land for them to reside in if for any reason they are asked to vacate the subject property.
- [11] The defendant as a further assurance on the above, as the plaintiffs allege, has signed a letter [Annexure "C"] dated 2<sup>nd</sup> day of August, 2010 whereby it stated



that plaintiffs can have the residential property for lifetime without paying any rental and should the defendant ask them to leave the subject property then the defendant and/or the beneficiaries and/or Trustees (whichever is applicable) will compensate the plaintiffs with \$15,000.00 (Fifteen Thousand Dollars) each and/or build another residential property on another land for them to reside.

- [12] Even though, the plaintiffs are claiming that the annexure "C" is an irrevocable authority given by the defendant securing the plaintiffs' right to possess the property, yet it is just a single-page, self-explained, and handwritten document which is purported to have prepared and given to the plaintiffs by the defendant.
- [13] Nevertheless, sometimes in January, 2015 the defendant has informed the plaintiffs verbally that she intends to sell the property and for them to vacate the property.
- [14] The plaintiffs are further asserting that upon relying on the promises and/or assurances and/or the irrevocable authority of the defendant they did not invest in any other property and do not have any other place to go or to buy a land and build a house as all their savings were/ and has been invested in the maintenance and in the upkeep of the property.
- [15] However, on the 17<sup>th</sup> June, 2015 plaintiffs were served with a notice(the notice) [Annexure "E"] to vacate in which the defendant required vacant possession of the property within 30 days and further stated that the defendant had revoked all the authority or permission given to the plaintiffs by the defendant.
- [16] The notice to vacate dated 17<sup>th</sup> June, 2015 further stated that after the expiry of the notice, rental will be charged to the plaintiffs at the rate of \$100.00 (One Hundred Dollars) per week which plaintiffs.
- [17] In the meantime, on the 4<sup>th</sup> August, 2015 another notice [Annexure "F"] to vacate was served on the plaintiffs to give vacant possession within the next 7 days and for them to remove forthwith the Caveat they had earlier registered against the property.
- [18] Through the notice dated 4<sup>th</sup> August, 2015 the plaintiffs were given a chance to buy the subject property in the sum of \$345000.00 (Three Hundred Forty Five Thousand Dollars).





Total no. of months	228
Plus no. of months (multiply)	<u>228</u>
Total repair and maintenance claim	<u>\$68,400.00</u>

- [24] The current value as plaintiffs claim at which the defendant is selling the subject property is in the sum of \$345,000.00 (Three Hundred and Forty Five Thousand Dollars) is due to the hard work and dedication that plaintiffs showed towards maintaining the subject property as the defendant promised the plaintiffs that they could reside in the subject property as long as they wish to reside, they further assert.
- [25] The second named Plaintiff claims that she would not have been under the false promises and representation of the defendant and unemployed now, but had she employed, she would have earned the following income (calculation in minimum wage rate):-

**Wages Claim per week calculation**

Minimum wage rate

1996	\$1.65
2015	<u>\$2.34</u>
Average of Wages Rate	\$2.00
Total Claim payable	
Average wage rate <sup>3</sup>	\$2.00
Hours per day	8
No. of days in a week	<u>6</u>
Total wages per week	\$95.76

Total no. of pay periods calculations

No. of years	19
Frequency of pay	<u>52 weeks</u>
Total pay period	988

Total wages calculation

Wages claim per week	\$95.76
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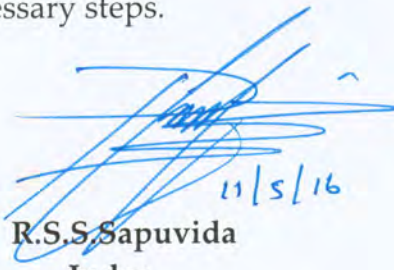
No. of pay periods	<u>988</u>
Total wages claim	\$94,610.88
Add FNPF claim Employer	<u>\$ 7,568.87</u>
<b>Total Claim</b>	<b><u>\$102,179.75</u></b>

- [26] The plaintiffs on the 28<sup>th</sup> of September, 2015 have received a notice from the Registrar of Titles dated 2<sup>nd</sup> September, 2015 for removal of the Caveat lodged by the plaintiffs. Annexure "J" is a copy of letter dated 28<sup>th</sup> of September, 2015 from the Registrar of Titles.
- [27] It is revealed that the defendant filed proceedings for vacant possession at the Lautoka High Court on 7<sup>th</sup> October, 2015. [Action No. 169 of 2015 – Annexure "M" is a copy of Originating Summons dated 7<sup>th</sup> October, 2015]
- [28] The plaintiffs have filed a response to the application filed by the defendant seeking vacant possession on the 21<sup>st</sup> day of October, 2015 and a hearing date has been assigned in the matter being 20<sup>th</sup> May, 2016. [Annexure marked "N" is a copy of affidavit in response filed by the plaintiffs]
- [29] The plaintiffs in their affidavit state that they have been informed and/or advised that **the subject property has been sold by the defendant** and that her action of selling the property constitutes a breach of process as the eviction proceedings before the Master of the High court of Lautoka is yet to be heard and a ruling to be delivered accordingly.
- [30] On the above foundation, the plaintiffs are seeking injunctive reliefs against the defendant as per their above styled ex parte notice of motion.
- [31] It is unassumingly admitted by the plaintiffs that there is a pending action instituted by the defendant before the Master of the High Court, Lautoka, against the plaintiffs for vacant possession of the property filed on 07<sup>th</sup> October, 2015.
- [32] The plaintiffs in the instance are the defendants in the case No. HBC 169 of 2015, pending before the Master.
- [33] The application filed by the defendant in HBC 169 of 2015 for vacant possession of the property is scheduled to be taken up for the hearing before the Master of the High Court on 20<sup>th</sup> May, 2016.



- [34] It is prima facie evident that the whole claim of the plaintiffs in the instance is based on damages for improvements made to the property in dispute by the plaintiff against the defendant.
- [35] The plaintiffs have already assessed the damages and or the claim against the defendant who possesses the registered proprietorship to the property as per paragraph 20, 23 and 25 above.
- [36] It appears to me that the plaintiffs in this matter are trying to curb the proceedings pending before the Master by filing the present application before this court to try and get a restraining order against the defendant which will in some manner jeopardize the process before the Master.
- [37] Be that as it may, when the case of the plaintiffs against the defendant in this case is closely observed, it is clear on the face of it they have assessed the damages against the defendant.
- [38] The very basic principle of injunction law is that the claimant is not entitled for injunctive relief for which damages are the proper remedy.
- [39] The only option left for the plaintiffs against the defendant in this case is to prosecute the claim for damages against the defendant if the plaintiffs have bona fide made the improvements to the disputed property as they so claim.
- [40] On the forgoing reasons, I refuse to grant the injunctive relief pleaded by the plaintiffs in the ex parte notice of motion dated 06th May, 2016 against the defendant.
- [41] The case is referred to the Master's Court for necessary steps.



  
11/5/16  
**R.S.S. Sapuvida**  
**Judge**  
High Court of Fiji

On the 11<sup>th</sup> day of May 2016  
At Lautoka